

2021 Annual Report

Office of the Integrity Commissioner

Jonathan Batty
Integrity Commissioner

March 25, 2022

ICT

OFFICE OF THE
**INTEGRITY
COMMISSIONER**
TORONTO

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Commissioner's Message

Introduction

My team and I worked remotely for almost all of 2021.

A.F. Moritz, who is Toronto's Poet Laureate, commemorated the first year of the COVID-19 pandemic to Council in March in his poem "Exactly Here the Marvel Spoke." His reflection, in the passage below, captured the experience of so many:

*We just begin to glimpse it, a new health—
we can't yet trace it clearly, but the work
inhabits us with passion at lonely desks,
or in companionable walks, in living rooms
and discussion halls, laboratories, councils, factories.
We work, we see another world.*

We are fortunate that we could work remotely and look forward to the return to working in-person. This report describes how in 2021 we:

- provided advice and processed gift declarations;
- managed inquiries and complaints;
- engaged with our stakeholders; and,
- provided policy advice to Council.

With the end of 2021 in sight, the Office of the Integrity Commissioner began preparing for the 2022 election year. As described below, my planning and day to day work is supported by a two-person team of whom many things are asked.

Office Operations

Kate Zavitz's expert contributions as Legal Counsel for the Office of the Integrity Commissioner, as well as her other keen insights, ensure we maintain a high calibre in all aspects of our work.

Our Coordinator, Administration and Operations has primary responsibility for managing inquiries from the public, members of Council, City staff and the media in addition to completing many of the administrative tasks that allow us to operate efficiently. Caroline Teigné filled this role with distinction for 3 years, until July 2021, when she accepted a well-

deserved promotion and advancement of her career in a new workplace. Since then, I am grateful that Lisa Di Felice has joined our team. Lisa's valued experience is derived from her work with Ontario's Long-Term Care COVID-19 Commission and, for several years, the Office of the Associate Chief Justice of the Ontario Superior Court.

For four months, Aminat Sanusi joined us on a temporary basis from the Law Society of Ontario's Law Practice Program as part of her professional accreditation requirements. Aminat served as our Legal Researcher and her contributions to our Office were very helpful. This would not have been possible without the help and support of both the People and Equity Division and City Legal Services. I look forward to their support as we consider participating in this important program in the future.

I would like to thank Kate, Caroline, Lisa and Aminat for their dedication over the year.

As I said in last year's annual report, we continue to try to use plainer language and to make our materials more inclusive. As a team, we have also taken training and devoted time to better respect diversity. Overcoming systemic and implicit bias is something that all workplaces, including ours, has to do.

I would also like to thank the City Manager's Office and the City Clerk's Office for their continued help supporting our operations. In particular, in the City Clerk's Office, I would like to thank City Clerk's Strategic Integration and Excellence team and the City Clerk's Business and Technology Planning group. Over 2021, we regularly asked for advice and assistance from these teams and the expertise and speed with which our requests were dealt with have been greatly appreciated.

As I describe below, my Office's work would also not be possible without the funding we receive from the City.

Operating Budget

The 2021 approved net operating budget for the Office was \$639,670.85. The expenditures for the Office are set out in Appendix 4.

In addition to our in-house team, the Office of the Integrity Commissioner requires the flexibility to retain external legal and investigative resources.

Sometimes we need expert and forensic help in our investigations. We may need additional resources in complex and concurrent investigations, On December 16, 2020, Council approved a reserve fund to cover these contingencies. In 2021, \$22,513.98 was drawn from that reserve fund to cover external legal and investigative expenses and \$90,000 was

contributed to it. This is a cost-effective and consistent way of supporting our work. Council's continuing support in 2021 recognizes the value and contribution of the Office in serving the public.

The Upcoming Year

I am placing greater emphasis on informal resolutions. Where an informal solution addresses a complaint to the satisfaction of all parties and is in the public interest, there is no need to investigate. Informal resolution can be a faster, more efficient and restorative way to address an issue. This does not take away from anyone's right to pursue or defend against a formal complaint.

I have also decided that, unless there are privacy concerns or other compelling reasons, I will submit reports to Council or the local board for all investigations, even where I find no Code of Conduct violation. Investigations take substantial time and resources to complete. In the interests of transparency, it is just as important to report when someone has acted appropriately as when they did not.

We made a start on both these things in 2021 and will continue to do so.

The 2022 Election Year

In addition to our regular activities, our team began preparations for the 2022 election cycle.

In December 2021, I reported to Council recommending changes to the Member-Organized Community Events Policy needed for 2022. Among other things, I will also release a detailed interpretation bulletin that reviews the legislation, Code of Conduct requirements and City policies that apply before, during and after Voting Day on October 24, 2022. The bulletin will help members of Council separate their re-election activities from their official duties and will help the public, media and City staff understand these requirements, too. I will provide members of local boards with similar materials.

Revising the City's Codes of Conduct

I have recommended since the start of my term in 2019 that the City's Codes of Conduct need to be updated.

The Codes of Conduct are a key part of the City of Toronto's accountability framework. The principles, rules and guidance in the Code of Conduct need to be clearly laid out so they are easily understood by the public, City staff and members.

The current Codes of Conduct were adopted by Council in 2008. At the time, they were precedent-setting and were a model for other municipalities. They need to be updated to, among other things, include better conflict of interest provisions. They also need to use inclusive language and be easier to read and apply.

On April 7, 2021, Council directed that I review and consult the public, members and other stakeholders and report back to Council in 2022. My team will be doing this in 2022.

Conclusion

Any update to the City's Codes of Conduct needs to consider the issue of workplace harassment. As I discuss below, legislative reform is needed to properly remedy such misconduct by elected officials.

Finally, I would like to thank the members of the public, elected and appointed officials and public servants who cooperated in our team's investigations. At a time when their work focused on reaching "another world" as described by A.F. Moritz, their help to us was timely, diligent and reflected the very highest standards of public service.

Respectfully submitted,

Jonathan Batty
Integrity Commissioner

Legislative Reform: Harassment involving Elected Officials

The Problem Requiring a Solution

Ontario needs to address how harassment by elected officials is remedied. This is a question facing municipalities across Ontario, not just the City of Toronto, and needs to be considered in the *City of Toronto Act, 2006* as well as the *Municipal Act, 2001*.

In 2020, a councillor in Brampton and in Ottawa were investigated and found to have sexually harassed others. The case from Brampton involved a constituent and the case from Ottawa involved employees and applicants for employment. The integrity commissioners recommended the maximum penalties. The councils issued reprimands, imposed the maximum pay suspensions, removed the offending members from committees and limited where they could work on city premises. Both outcomes were challenged in Divisional Court.

Even in applying the most severe penalties at their disposal, it is clear the penalties a Council can impose are inadequate. Provincial legislation is required.

In March 2021, a private member's bill was introduced in the Legislative Assembly to address this matter. The provincial government also conducted an online consultation to ask the public for its opinions on this issue. I alerted Council of these matters in July 2021.

Ontario's municipal accountability frameworks do not adequately address the problem of workplace harassment and discrimination by elected officials. This is a significant gap. Leaving serious misconduct to be addressed "at the ballot box" is not a fair, timely or effective solution.

Members of municipal councils are elected for a four-year term. Elections engage many substantive issues. Turning an election into a referendum on whether someone should be removed from office for their misconduct does a disservice to the people who have been harassed and the electorate. Harassment is a breach of the public trust.

When the public trust is breached, someone should be removed from office. Under the *Municipal Elections Act, 1996* someone can automatically be removed for late filings or failing to file accurate financial statements. Under the *Municipal Conflict of Interest Act*, a judge may declare a member of Council's seat vacant, order financial restitution, suspend pay or order a reprimand for a member who acts improperly by furthering their own pecuniary interests.

Is harassment any less a breach of the public trust? Is such a breach any less deserving of severe penalty than it would be for any other person in the workplace?

Anti-Harassment and Discrimination Protections in the Workplace

Ontario's *Human Rights Code* includes protections against harassment and discrimination in the workplace. The Human Rights Tribunal of Ontario is an expert adjudicative tribunal with comprehensive remedial powers. While the tribunal may deal with workplace harassment complaints against a member of a municipal council, the tribunal does not have authority to remove someone from office.

The *Occupational Health and Safety Act* was amended almost 12 years ago to require employers to address harassment in their workplaces. Employees subject to the threat of violence and harassment were extended the right to refuse work if their employers do not adequately assess and mitigate the risks they face. This legislation, however, does not provide any effective sanctions against elected officials. As a result, anti-harassment policies are not comprehensively applied to members of municipal councils.

The #MeToo movement has brought focus to the issue of harassment. Legislative bodies across North America are being called upon to address workplace harassment. In Canada, Equal Voice assessed how the House of Commons and our provincial legislatures measure up. In its paper "Best Practices for a Harassment Policy for Elected Officials," Equal Voice noted that Parliament and many provincial legislatures did not have clear and effective policies for addressing workplace harassment. The same can be said for municipal councils in Ontario. Having a Code of Conduct is a good first step, but the penalties for misconduct must be proportional to the harm caused.

Regulating the Conduct of Members of Council

Like MPs and MPPs, members of Council are publicly entrusted with the authority to make laws, decisions and to hold civil servants to account. Unlike MPs and MPPs, however, they are not members of a constitutionally-recognized elected body that has an inherent constitutional power to discipline and expel someone from their elected body. Instead, another level of government makes the laws governing their conduct in office.

For Toronto City Council, its conduct is governed by the *Municipal Conflict of Interest Act* and the *City of Toronto Act, 2006* which have been enacted at Queen's Park. Section 157(1) of the *City of Toronto Act, 2006* authorizes Council to adopt Codes of Conduct in accordance with the requirements prescribed in Ontario Regulation 58/18 made by the provincial government.

Together, the *Municipal Conflict of Interest Act* and the *City of Toronto Act, 2006* prescribe the powers of my Office to investigate complaints and Applications about members of Council.

Designing the Legislative Solution

In the recent cases in Ottawa and Brampton, councils questioned why a councillor found to have harassed others could not be dismissed as would any other person in the workplace. The answer is simple. There is no legislative provision for this.

Holding elected office is a unique privilege, but should not create an immunity from having to comply with the requirements for appropriate behaviour in the workplace.

As noted above, making mistakes in election finance reporting or acting despite having a financial conflict of interest is grounds for removal from office. These self-serving and unethical behaviors are deemed to destroy the public's trust in an elected official.

For similarly convincing reasons, the penalty of removal from elected office should be possible if someone is found to have harassed another person. Legislation is needed to do this.

The following 7 considerations need to be addressed to design the necessary legislative solution:

- 1) *Should members of Council have mandatory training about anti-harassment requirements in the workplace?*

Given the influence and power that members of Council exercise within City government, should they be required, before assuming office, to receive the same sort of training and certification that managers and employees do in the workplace? I recommend they should.

- 2) *Should there be a duty to report misconduct?*

This question has a couple of dimensions. Should elected officials have a mandatory duty to report instances where they learn that another elected official has harassed someone? Similarly, should City managers and employees have a mandatory duty to report instances where they learn that an elected official has harassed someone? I recommend they should because a culture of silence and denial in the workplace is wholly detrimental to eliminating inappropriate behaviour.

3) *What range of penalties are appropriate to impose?*

While misconduct by employees can be addressed by progressive disciplinary measures short of termination, these penalties may not be practical or advisable for members of Council.

Members of Council, unlike MPPs and MPs, are not subject to the internal party discipline of a caucus. Unlike people who are hired or appointed, suspending a member of Council from serving on council or committees (or dealing with constituents) has adverse consequences for others. Typical employment law remedies, like a temporary suspension from work or restrictions on dealing with others, adversely affects constituents, Council, and the good governance of a municipality. Inappropriate conduct must be penalized and, because elected officials are personally entrusted with such unique and powerful fiduciary duties, a serious breach of that trust can only be remedied by removal from office.

4) *What remedial measures should be available, what supports should complainants receive, and how should they be involved in this process?*

Imposing penalties on those who harass others is only one component of an effective system for addressing harassment. A comprehensive solution, and a range of remedial measures, is needed to correct a poisoned environment.

If a culture of silence and denial is to be eliminated, people who complain must be appropriately heard and supported in this process. Any legislative response to this issue needs to incorporate advice from concerned members of the public and experts in this field about what needs to be put in place.

5) *What supports/indemnifications should members of Council receive and how should they be involved?*

Holding elected office is challenging and we ask a lot from those whom we elect.

At the same time, any process that formally questions someone's conduct and capacity to hold office, must be fair, impartial and permit someone to provide a full answer and defence to allegations of harassment. Like complainants, members of Council must be appropriately heard and supported in this process. Any legislative response to this issue needs to incorporate advice from members of Council, the public and experts on these issues.

6) *Who is best placed to investigate these matters?*

Allegations of harassment need to be investigated in an expert, fair and impartial manner. The investigator needs to be independent from Council and have the required expertise to investigate such matters or have the ability to retain expert investigators who do.

7) *Who is best placed to impose penalties?*

I recommend the person (or agency) mandated to investigate allegations of harassment be a different person (or agency) than the one who adjudicates and imposes the necessary penalties or remedies.

Sanctioning of a member of Council for such misconduct is not a “political question.”

“Politics” needs to be taken out of this process because where allegations of harassment are decided in a political forum, political issues are raised, debated and given weight. This is detrimental for complainants, respondents and the legitimacy of the process. In recommending this, I depart from the recommendations of some other municipal integrity commissioners representing other municipalities in Ontario, who recommend the creation of a “super-panel” of municipal politicians drawn from regions across Ontario to decide these cases. Such a system would not remove the “politics” from these matters but could further exacerbate this problem.

An expert, transparent and arm’s length decision-maker needs to decide these cases. Whether a special-purpose body is created to do this work, or it is assigned to an existing one, complaints about harassment need to be addressed in an efficient, fair and timely way that takes “politics” out of the decision.

Report on Activities

Section 1: Advice and Gift Declarations

Advice for Members of Council and Members of Local Boards

Providing confidential advice to help members of Council comply with the *Municipal Conflict of Interest Act* (MCIA) and the *Code of Conduct for Members of Council* is a key responsibility of the Integrity Commissioner. The Integrity Commissioner is also assigned responsibility for advising, receiving and publicly reporting on gifts received by members of Council. I request meetings with members of Council each year to review all these matters and update them about the activities of my Office. This year, I met with 22 of the 26 members of Council.

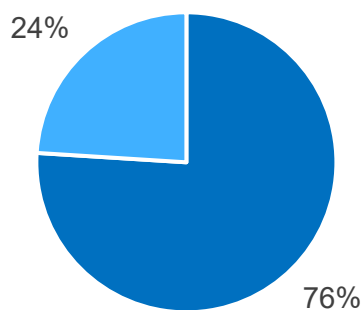
Similarly, I provide advice to members of the City's boards and adjudicative tribunals about their obligations under the *Code of Conduct for Members of Local Boards (Restricted Definition)* and the *Code of Conduct for Members of Adjudicative Boards*. As there are approximately 1000 members of these boards and adjudicative tribunals, it is not possible to meet with everyone individually and my Office's outreach activities are important to provide updates to these members and to let them know who to contact if they have questions.

The advice I provide needs to be thorough, practical and timely. I often receive urgent requests for advice at the last minute or outside regular working hours. The fact that the vast majority of advice I provide, supported by my team, is given within 24 hours or less speaks to the emphasis we place on this.

To advise someone, I may need to refer to past advice, reports, legal precedents, Council decisions and City policies. The City's three Codes of Conduct are similar, but not identical, so that is always considered. Requests may engage the MCIA and one or more provision in a Code of Conduct. In addition to applying the correct standards and interpretive principles, the full context of a situation is important to understand. Precise advice requires precise background information so most advice requests require follow-up to obtain more information. When I provide written advice, members typically contact me to discuss and confirm their understanding of the advice or if they have follow-up questions when circumstances change.

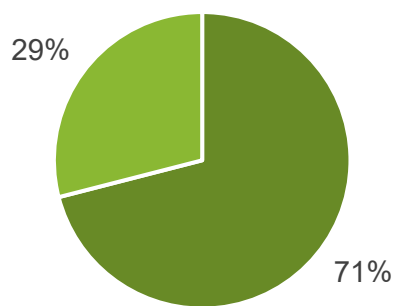
As shown below, I provided advice in two days or less to members of Council 76 percent of the time and to members of local boards 71 percent of the time.

*Advice Response Time:
Members of Council*



- Advice Provided in 2 Days or Less
- Advice Provided in 3 Days or More

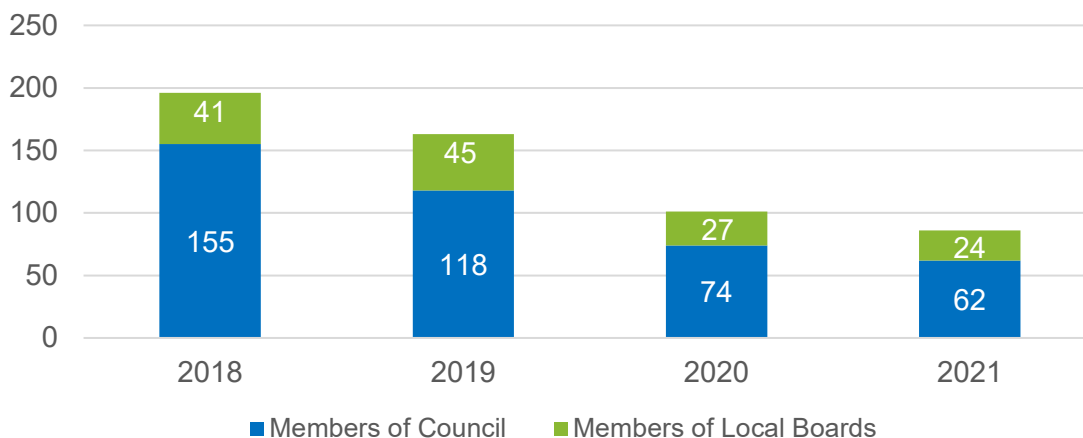
*Advice Response Time:
Members of Local Boards*



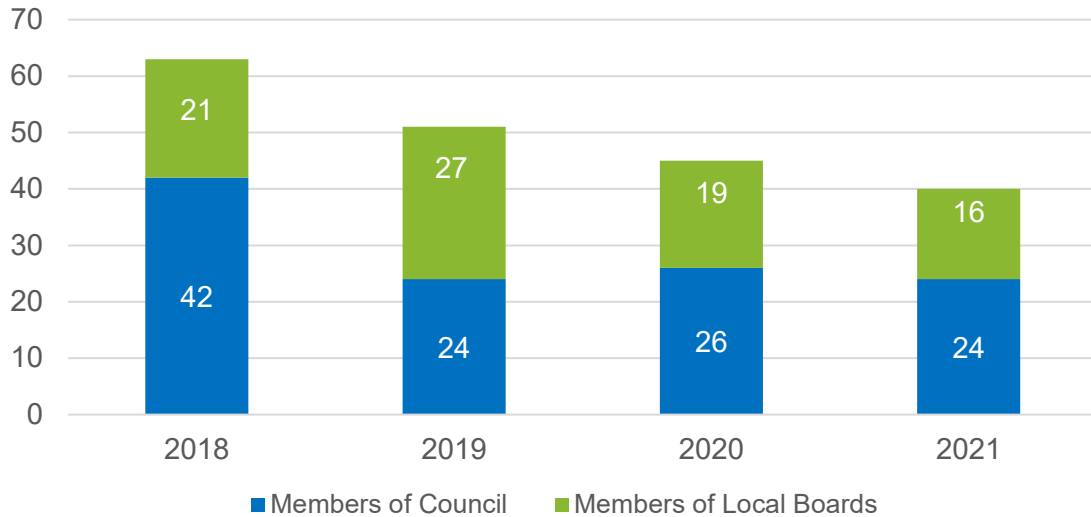
- Advice Provided in 2 Days or Less
- Advice Provided in 3 Days or More

I was contacted for advice 86 times during this reporting period. While my Office’s reporting appears to show fewer advice requests being received in 2021, those numbers may not be reflective of the complexity and effort required to respond so I will be examining how to better report this in the upcoming year. Appendix 1 contains examples of some of the advice I provided this year. The following charts summarize how many requests we received, who was asking for advice and what they wanted advice about.

Number of Advice Requests



Number of Members who asked for Advice



Subject of Advice Requests

Subject	Number of Requests	Percentage of Requests
Understanding pecuniary interests under the MCI and/or use of influence under the Code of Conduct	44	51%
Complaining about another member	13	15%
Dealing with City staff and/or following City policies and procedures	10	12%
Providing letters of reference and support for activities and fundraising	8	9%
Using City resources and/or members' office budget	4	5%
Observing post-employment obligations	4	5%
Receiving gifts and benefits	2	2%
Other	1	1%

Gifts and Benefits declared by Members of Council

Under Article IV (Gifts and Benefits) of the Code of Conduct, members of Council are not permitted to receive any gifts or benefits directly or indirectly connected with their official duties unless they fall within the following categories:

- 1) Legally authorized compensation (e.g. a salary from the City for being a member)
- 2) Official gifts (e.g. received as part of protocol)
- 3) Political contributions
- 4) Volunteer services in their offices
- 5) Gifts from an event honouring a member
- 6) Sponsored travel and related expenses
- 7) Food and beverages at events
- 8) Complimentary media in their offices
- 9) Donations for Member-Organized Community Events

Members must report to my Office if they have received anything that is worth more than \$300 and falls within category 2, 5, 6, 7, 8 or 9 noted above. These reports are posted on the [Office of the Integrity Commissioner's website](#).

Separate forms are used to report Donations for Member-Organized Community Events (category 9) and Sponsored Travel and related Expenses (category 6) as there are additional policies and processes that apply to receiving and reporting these gifts and benefits: the [Council Member-Organized Community Events Policy](#) and the [Sponsored Travel Procedures and Form Guidelines](#). Anything else is reported on a form under the [Gifts and Benefits Procedure](#).

Of note in the chart below, Donations for Member-Organized Community Events and Sponsored Travel and related Expenses declined sharply due to public gatherings and travel being curtailed because of the COVID-19 pandemic.

Number of Declaration Forms Received

Category	2018	2019	2020	2021
Community Events	14	39	8	8
Sponsored Travel	6	8	5	0
Gifts and Benefits	0	0	0	0

Section 2: Inquiries, Complaints and Applications

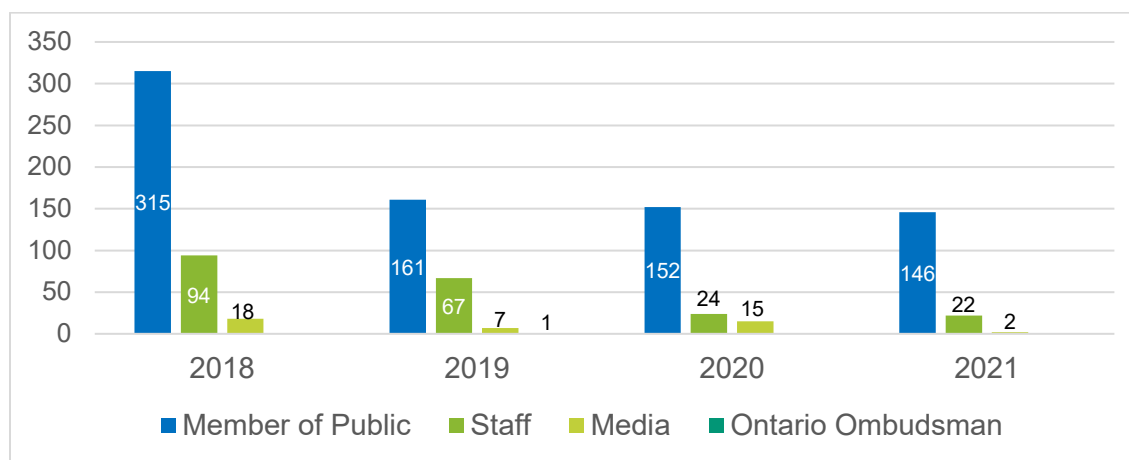
Inquiries

When the public, City staff and the media contact my Office it is invariably about complaints: specifically, how to make a complaint, whether their issue is within our jurisdiction or asking if we have received a complaint about someone. In answering those inquiries, we explain that we only have jurisdiction over members of Council and members of local boards. Many inquiries result in a referral to another City office or external agency.

Most complaints that I receive begin with an inquiry. While we received fewer inquiries in 2021, those numbers may reflect that the information on our website about how to make a complaint was updated and simplified in September 2021. In the year to come, the numbers of inquiries may grow as 2022 is an election year and that was a pattern observed in 2018, the previous election year.

The table below shows how many inquiries we received over the last four years and who we received them from.

Number of Inquiries



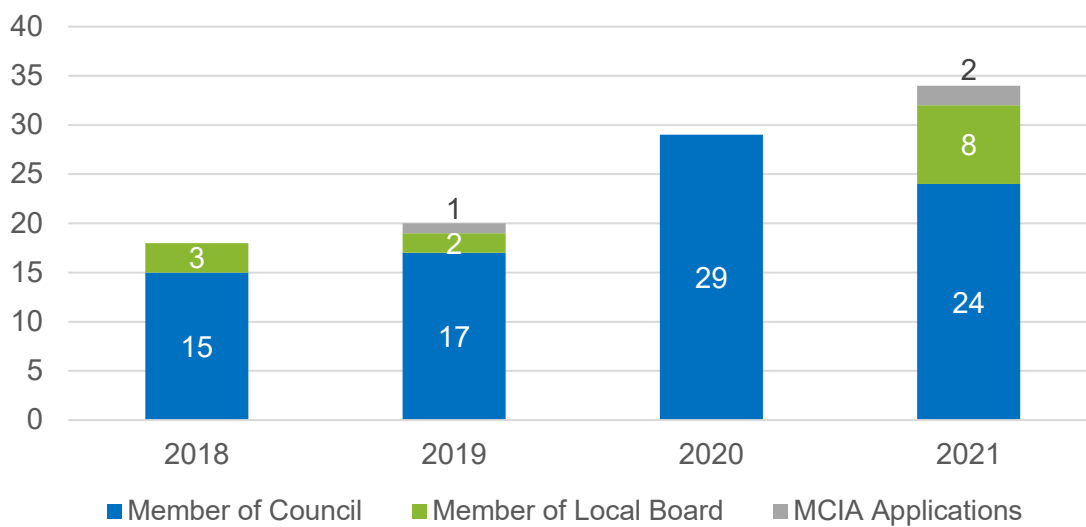
Informal Complaints, Formal Complaints and Applications

Under the *City of Toronto Act, 2006*, I may only investigate someone’s conduct if I receive a Code of Conduct complaint or an MCI/A Application. I follow the process set out in the [Complaint and Application Procedures](#) for assessing, investigating and reporting on matters. The procedures include a process for dealing with complaints either informally or formally. There is no informal process for resolving MCI/A Applications.

In 2021, the combined number of informal complaints, formal complaints and MCIA Applications I received increased by about 17 percent as compared to the previous year. Of note, the number of informal complaints grew significantly and surpassed the total number of all informal complaints combined for the previous three years. I will be interested to see if this is the start of a trend. The initial review of an informal complaint takes just as much work as for a formal complaint, but the resolution may prove to be much faster. It may be that more informal complaints were submitted as my Office clarified the process in our updated web materials.

The table below shows how many complaints and Applications we have received over the last four years.

Number of Complaints and Applications received 2018 to 2021*



*MCIA Applications could only be submitted to the Integrity Commissioner beginning March 1, 2019.

Informal Complaints

The informal complaint process is a form of alternative dispute resolution where I assist the parties arrive at a mutually acceptable resolution to a complaint. They do not require a formal investigation.

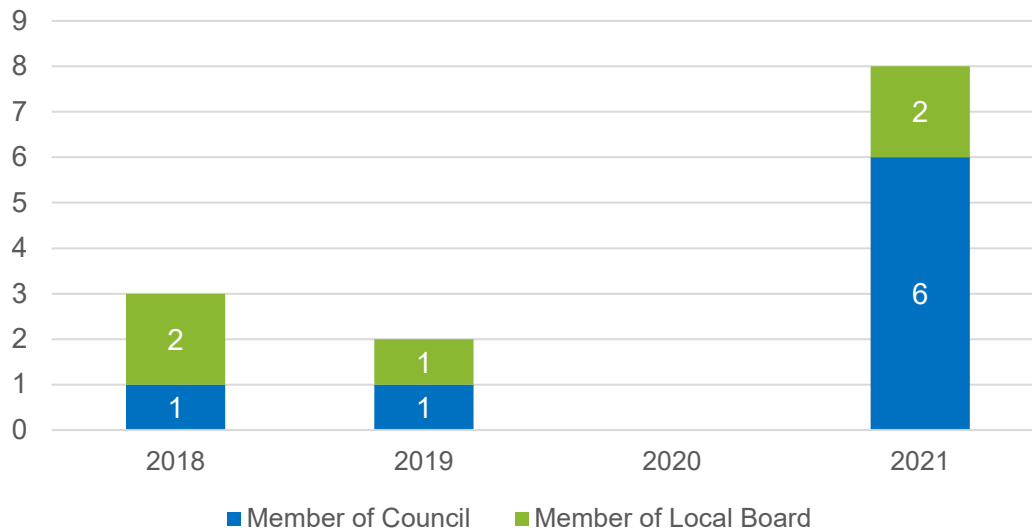
Often, these complaints involve an isolated “customer service” issue where a corrective action, or an apology, is sufficient. I approve this manner of resolving complaints where a person who makes a complaint can obtain an appropriate remedy and a member is able to

correct the mistake and does so in good faith. If someone makes an informal complaint, and a member is not willing to resolve it voluntarily, this process cannot be used but that person may file a formal complaint.

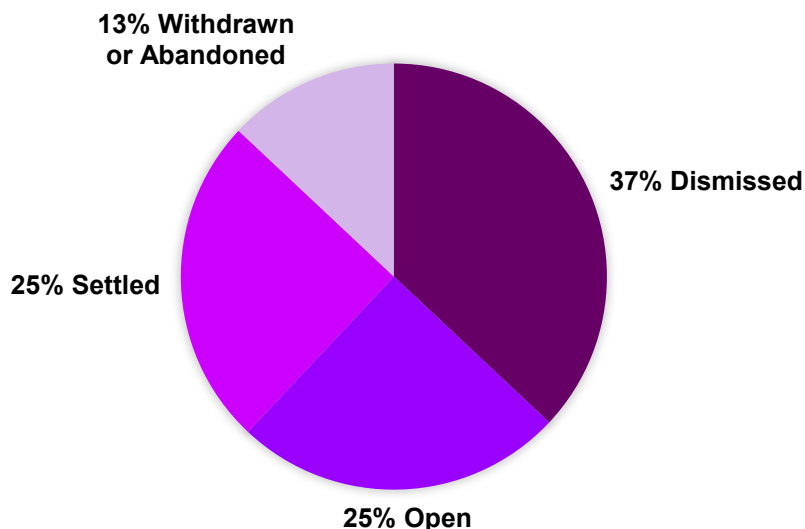
This alternative dispute resolution process is used at my discretion. I will not use this where I do not have jurisdiction over the issue, the allegations are without merit or a party is not acting in good faith. I will not use it for allegations of serious misconduct or a pattern of misconduct. In such cases, it is not in the public interest to resolve them informally. Where appropriate, I may also suggest to the parties that a formal complaint be resolved informally.

I received eight informal complaints during 2021. Appendix 2 contains examples of some of the informal complaints and how they were resolved.

Number of Informal Complaints received 2018 to 2021



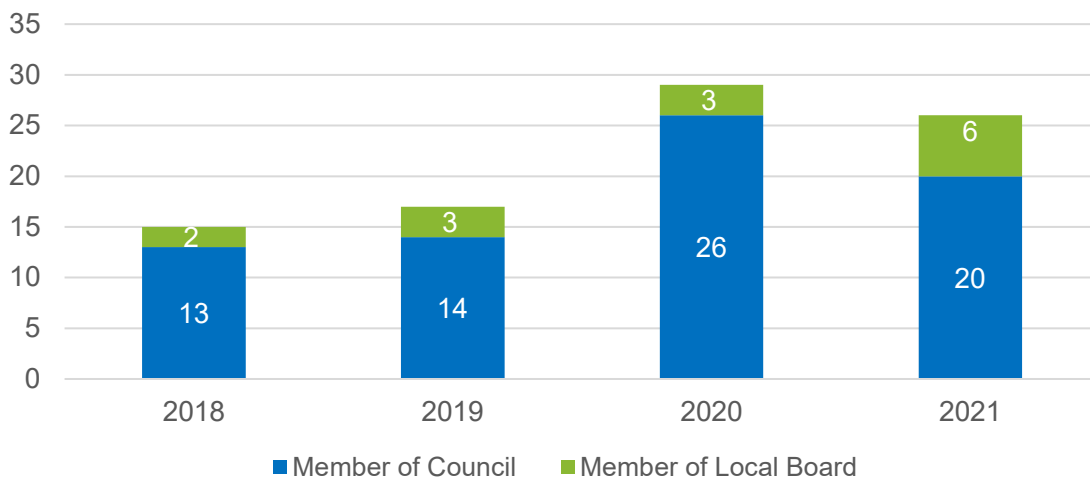
Outcome of Informal Complaints received in 2021



Formal Complaints and MCIA Applications

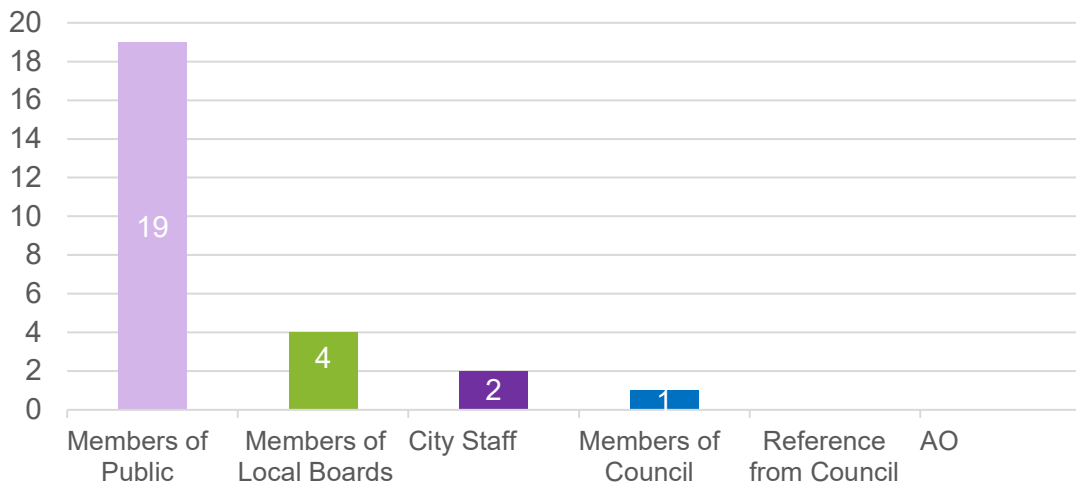
As shown below, in 2021 I received fewer formal complaints and Applications than last year but twice as many concerned members of local boards.

Number of Formal Complaints and MCIA Applications received 2018 to 2021



Also as shown below, the vast majority of the complaints were made by members of the public. For all matters, 23 (88 percent) were completed by the end of 2021.

Who made Formal Complaints/Applications in 2021



Formal Complaints/Applications Closed in the Year Received

Formal Complaints and Applications	2018	2019	2020	2021
Number received	15	18	29	26
Number closed in the same calendar year as they were received	12	16	22	23
Percentage closed in the same calendar year as they were received	80%	89%	76%	88%

Intake Review

I conduct an initial review of a complaint under a Code of Conduct, or an Application under the MCIA, to determine if it is within my jurisdiction and includes sufficient grounds to investigate. If there are not, or I determine there is no purpose to investigate, I dismiss the complaint or Application.

In 2021, I dismissed a combined total of 20 formal complaints and MCIA Applications at the intake review stage. Appendix 2 contains examples of some of the complaints/Applications I dismissed provided to show how they were evaluated.

Outcome after an Investigation begins

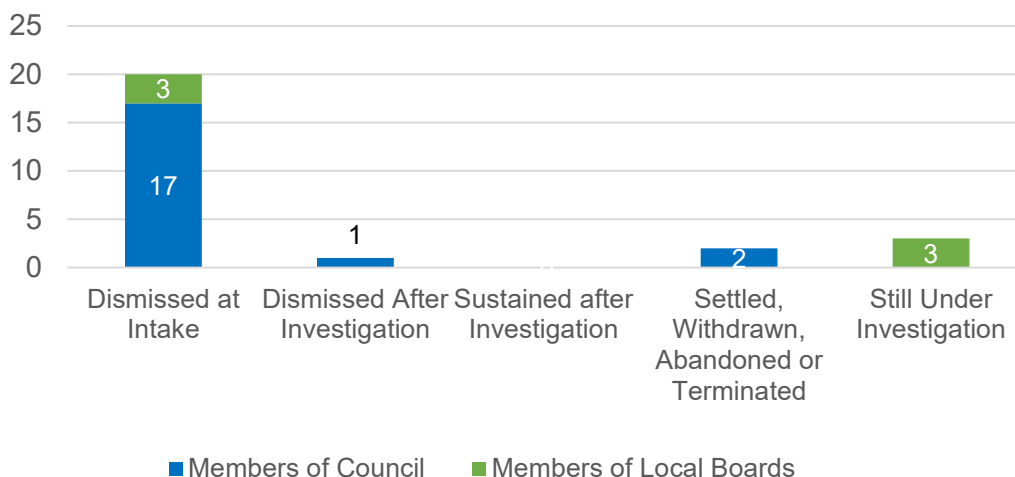
When I investigate a complaint or Application, the member is notified and asked to submit a response. In my investigations, relevant people are asked to answer questions, sometimes under oath or affirmation. I ask, or order, documents and other materials to be produced. I review the evidence and sometimes retain external forensic, investigative and legal assistance.

There are three possible outcomes:

- 1) A complaint or Application can be wholly dismissed after an investigation. In such cases, the Integrity Commissioner may report to Council or the local board; or, where an Application is involved, advise the parties the investigation is terminated.
- 2) A complaint or Application can be sustained, in whole or in part, after an investigation. In such cases: where a complaint is involved, the Integrity Commissioner must report to Council or the local board; or, where an Application is involved, make an Application to a judge.
- 3) A complaint or Application can be withdrawn or abandoned if someone decides they no longer wish to pursue a matter or fail to respond to the Integrity Commissioner about it.

The outcome of complaints and Applications received in 2021 is shown in the graph below:

Outcome and Status of Formal Complaints/Applications received in 2021



Reports to Council

In 2021, I submitted two investigation reports to Council about the conduct of members:

- 1) [Report on Councillor Josh Matlow's Tweet Criticizing a Committee Decision.](#)

Council received my report, which found no misconduct, and adopted it on December 15, 2021.

- 2) [Report Regarding the Conduct of Former Councillor Jim Karygiannis.](#)

I reported to Council on July 7, 2021 about three complaints made in 2020. I did not find that Mr. Karygiannis breached Article VIII (Improper Use of Influence) of the *Code of Conduct for Members of Council* but did find he breached Article XIV (Discreditable Conduct) and Article XV (Failure to Adhere to Council Policies and Procedures) by failing to meet the requirements of the Human Resources Management and Ethical Framework for Members' Staff. I did not recommend any penalty as Mr. Karygiannis was no longer on Council. Council considered my findings and adopted my recommendation at its meeting on November 9, 10 and 12, 2021.

Section 3: Engagement with Stakeholders

Information for Members of Council

In addition to meeting with members of Council, I write to them over the course of the year with information and important reminders. Some letters and are posted on my Office's website, the others I have included in this annual report (see Appendix 3).

In 2021 I sent letters on the following topics:

Environment Days – February 1, 2021 (Appendix 3)

This is an annual letter that outlines for members how they may be involved in Environment Days that are organized by Solid Waste Management Services (SWMS). The main reminder is that members should follow SWMS guidelines and be mindful of who is invited to participate, as this gives a unique platform to those businesses and groups.

[Ontario Launches Consultation to Strengthen Municipal Codes of Conduct – March 12, 2021 \(online\)](#)

As the provincial government announced it would launch consultations about how to strengthen accountability measures for members of Council to maintain a safe and respectful workplace, I wrote the minister responsible to obtain a better understanding of:

- 1) the legislative and other options the government was considering and for which it was seeking input;
- 2) who would have an opportunity to provide input on the government's options and suggest other solutions; and,
- 3) the schedule for the consultation and introduction of legislation.

Copying all members, I noted that I intended to report to Council with answers to these questions and hoped to include the government response in my report.

While I did not receive a response from the government, I advised members of these consultations. My policy advice to Council on this is noted in Section 4, below.

[Working Together – March 17, 2021 \(Appendix 3\)](#)

I wrote to members after some very long meetings when participants, as they were tired, made unguarded comments because of fraying patience. I observed that long meetings, which run late into the night, were problematic. I encouraged members of Council and City staff to be patient and continue to acknowledge and respect the contributions each make. I recommended they constructively consider how to improve Council meetings and their other dealings with each other.

[September 20, 2021 Federal Election – August 16, 2021\(online\)](#)

Immediately following the call of the federal election, I wrote to members to remind them that, when they and their staff become involved in election campaigns, they must be sure to separate their work as elected officials and members' staff from their activities as campaign volunteers or supporters. The public must have confidence that the City's resources are not being used to support one political party or candidate over another. This separation of activities complies with the principles and requirements in the Code of Conduct.

Community Events Reminder -- October 22, 2021 (Appendix 3)

With the potential of eased restrictions on public gatherings, I reminded members and their staff of the Council Member-Organized Community Events Policy. Specifically, I reminded them that if they wished to accept donations to support the activity, they needed to advise my Office of the proposed donor and submit a completed Donor Declaration Form before accepting any donation. I sent this reminder because, if they receive a donation and I determine it is an impermissible gift, it has to be returned or refunded.

Gifts in the 2021/2022 Holiday Season – December 10, 2021 (Appendix 3)

In conjunction with the Lobbyist Registrar, I wrote to members to remind them that under the *Code of Conduct for Members of Council*, members must not receive any gifts or benefits of any value from lobbyists. They could only receive gifts from another source if it was one of the exceptions set out in Article IV (Gifts and Benefits) of the Code of Conduct.

Engagement with Local Boards

In 2021, I gave 11 presentations to the boards for arenas, business improvement areas (BIAs), agencies, and tribunals. Each presentation at the board meeting included a detailed presentation followed by a question and answer period. The presentations reviewed the requirements of the members' Code of Conduct, the MCIA and information about when and how to seek advice. I met with:

- Bloor West Village BIA – January 13, 2021
- Downtown Yonge BIA – January 28, 2021
- Toronto Parking Authority – February 8, 2021
- Pape Village BIA – April 14, 2021
- Leaside Memorial Community Gardens Arena – June 23, 2021
- Property Standards Committee – June 30, 2021
- Willowdale BIA – July 13, 2021
- Toronto Licensing Tribunal – August 14, 2021
- Toronto Local Appeal Body – September 24, 2021
- Administrative Penalty Tribunal – October 19, 2021
- Committee of Adjustment – November 1, 2021

Public Engagement

The major outreach event for our team this year was the Public Sector Ethics Conference: Building Trust in Government 2021, held virtually on May 21 and 22, 2021.

This was the third bi-annual conference of its kind. While originally scheduled to be an in-person event for May 2020, the conference was postponed for a year and reconfigured as a virtual event due to the COVID-19 pandemic. The conference was hosted by the Office of the Integrity Commissioner for Ontario, which partnered with the Institute for Public Administration in Canada (IPAC), the Office of the Public Sector Integrity Commissioner of Canada and the federal Office of the Conflict of Interest and Ethics Commissioner. The City of Toronto was a key partner for the conference. I sat on the steering committee for the conference and the City Manager's Office contributed funding for the event.

As the conference was held virtually, accountability officers and public servants from across Canada, and a contingent from the City of Toronto, were able to participate and heard from experts about emerging issues and best practices in ethics oversight.

May proved to be an especially busy month. On May 11, 2021, along with the Integrity Commissioner for Ontario, I spoke at a virtual professional development event hosted by the Financial Management Institute of Canada (Ontario Chapter), a professional organization focusing on financial management in the public sector. The event was entitled "Ethics in Government: a Conversation with your Integrity Commissioners" and I spoke about how to ensure the interface between members of Council and municipal public servants maintains high ethical standards.

Raising awareness about the need for legislative reform to fully address workplace harassment by municipal elected officials has been a major part of our team's work this year.

On May 27, 2021, I was a panelist at a York University symposium about reforming municipal Codes of Conduct and I spoke on this issue. Our team worked with two fourth-year undergraduate students in the Ethics, Society & Law program at Trinity College, University of Toronto and the Community Research Partnerships in Ethics (CRPE) program. Their research paper, "Cases of Sexual Harassment: An Examination of the Mandate & Jurisdiction of Municipal Integrity Commissioners," confirmed the need for legislation.

I also helped facilitate and participated in two meetings of municipal integrity commissioners and our Office posted 16 of their investigative reports to the CanLII database to promote transparency and awareness of ethics oversight in municipalities across Ontario.

Section 4: Policy Advice

Under the *City of Toronto Act, 2006*, I advise Council about policy matters relating to ethics oversight at the City of Toronto.

Code of Conduct Review

The City has three Codes of Conduct, the:

- *Code of Conduct for Members of Council*
- *Code of Conduct for Members of Local Boards*
- *Code of Conduct for Members of Adjudicative Boards*

On April 7, 2021, I reported to Council that they should be updated. Council agreed and directed me to review, consult and report back to them with recommendations in 2022.

Related to that work, I [wrote to members on July 13, 2021](#) to advise them of the provincial online consultation which included questions about what should be included in Codes of Conduct and if penalties for non-compliance should be strengthened. I also advised Council of my responses to those questions.

Other Policy Matters

As directed by Council on May 5, 2021, the City Manager consulted me in October 2021 about whether the Office of the Integrity Commissioner's mandate should be broadened to include oversight to consider complaints about City procurement processes. I advised that my Office already had a mandate to consider complaints about member misconduct, including misconduct involved with City procurement.

On December 7, 2021, Council adopted revisions to the Council Member-Organized Community Events Policy that I recommended were required for the 2022 election year as a result of the COVID-19 pandemic and to account for the reduction of the size of Council in 2018.

Appendices

Appendix 1: Advice Summaries

Appendix 2: Complaint/Application Summaries

Appendix 3: Letters to Members of Council

Appendix 4: 2021 Expense Budget

Appendix 1: Advice Summaries

As our team typically does in its annual report, we have provided examples of some of the advice provided in 2021. These examples are anonymized to protect the confidentiality and privacy of the person requesting the advice. These summaries are intended to help elected and appointed members identify possible issues under the relevant Code of Conduct or the MClA, but they are not a replacement for advice applicable to specific circumstances. These examples are not necessarily reflective of the complexity of some of the advice I am asked to provide because it is not possible to describe some advice and maintain confidentiality.

Members of Council

In the examples below, the "Code of Conduct" refers to the *Code of Conduct for Members of Council*.

1) *Redirecting an honorarium*

A member was offered an honorarium for speaking at an event about their work as an elected official and, rather than personally accepting it, asked if they could have the organization re-direct it to a charity on an anonymous basis.

I advised that the member should not do this. Even if it is requested that the donation to a charity be made anonymously at the member's request, there is still a benefit in the form of a speaker's fee being paid by the organization for a member's services -- even if the fee is directed to a third party. Under Article IV (Gifts and Benefits) of the Code of Conduct this is an impermissible gift.

2) *Concerns about a member of a local board having a conflict of interest*

A member who sits on a local board was concerned about meeting with another member of that board to discuss an important operational matter concerning the board. The member was concerned about meeting because they suspected the other member of the board had a conflict of interest and wanted advice about whether they should meet.

I advised two things:

- I could not advise the member whether or not the other person had a conflict of interest. Members may consult me for confidential advice about their own affairs or they may complain to my Office if someone who sits on a local board is not complying with the *Code of Conduct for Members of Local Boards (restricted definition)* or the *Municipal Conflict of Interest Act (MClA)*. If I receive a complaint, I can investigate the

matter. I only publicly find someone has not complied with their obligations following an investigation.

- As this concerned an important operational matter, I advised that, rather than the member personally meeting with the other person on the board and deciding this matter, this was something that should be considered and decided by the board in a formal meeting. If that board member had a pecuniary interest, they would need to declare an interest and recuse them self as required by the MCIA.

3) *Promoting a scholarship to a private school*

A member was asked by a private school to promote a tuition scholarship it was offering and the member wanted to know if this was permitted under the Code of Conduct.

I advised this was not permitted by Article VIII (Improper Use of Influence). The school's request asked the member to support its marketing and advertising campaign by sending out and posting information from the member's office to help the school "connect with potential students." Doing so would be using City resources for a private commercial purpose that is not connected with the public duties of a member of Council.

4) *Debating and promoting a City program to which a member was applying*

A member, with an active application being considered by City staff to obtain a benefit from a City program, asked if they could: (1) participate in debates and votes concerning the improvement of the program's benefits; and, (2) promote the program by referencing their positive experience with obtaining this benefit.

I advised that to comply with sections 5 and 5.1 of the *Municipal Conflict of Interest Act* (MCIA), the member needed to declare an interest in matters before Council dealing with the benefit, while the member was in the application process, as the potential receipt of the benefit in question gave rise to a pecuniary interest. I also advised that until their application had been approved by City staff, they should not advertise their receipt of the benefit as this could be perceived as a way of pressuring City staff to approve their application.

5) *Organizing a Food Drive*

A member asked about how to organize a food drive with public schools in their Ward. It was proposed the member would ask schools to: (1) ask their school community to make the donations at the request of the member; and, (2) receive and manage the donations for the member. The member would then collect the donations and distribute them to select charitable groups and shelters in the community.

I advised that the easiest way to organize an activity like this is to follow the Member-Organized Community Events Policy as it describes how members manage monetary gifts and gifts in-kind. Monetary gifts have to be in the form of a cheque made out to the City of Toronto and donations, either monetary or in-kind, have to be cleared through my Office because the donor cannot be a lobbyist or person with an application before the City. Members typically participate in food drives and similar events organized by others because it avoids them having to manage donations.

I also advised the member should take care asking a school to promote the member's event and collect donations on the request of the member. Anytime a member asks a school to do something like this, it is a good idea to check with the school that it is allowed to use time and staff resources to support an activity run by an elected official. If the event was contrary to school policy, persuading a school to operationally support a member-run activity could also be perceived as the improper use of influence.

6) *Defamation*

A member asked about how to respond to the conduct of a member of the public, who was allegedly defaming the member and their staff.

The member was concerned about someone's public comments and wanted advice about how to respond in a way that was consistent with the Code of Conduct.

I advised that, while elected officials may be criticized by others, members and their staff are entitled to respond to defamatory statements. If they personally or publicly respond, they should do so in a professional manner in order to comply with the Code of Conduct. If members and their staff are concerned that false and injurious statements made about them are causing harm or damage to their reputation, they may wish to seek legal advice about how to respond and obtain redress. I also advised the member to consult the City Clerk's Office about whether or not legal advice could be funded by their office budget or be provided by City Legal Services.

7) *Asking a developer for funds to re-open a school*

A resident's association wanted operational funding for a school to be reopened with the financial help of developers. The association asked the member to contact the developers to ask them for this help. The member did not think it was appropriate to do so but wanted to confirm this.

I confirmed the member was correct that they should not do so as it would not follow City policy.

The City may only ask developers to fund a community benefit under the [Donations to the City of Toronto for Community Benefits Policy](#). Were the member to do what the association asked, that would be contrary to the City's policy for negotiating community benefits.

Developers may be asked to provide community benefits under section 37 of the Planning Act. In Toronto, the role that members may play in seeking community benefits is set out in the City's [Implementation Guidelines for Section 37 of the Planning Act and Protocol for Negotiating S 37 Community Benefits](#). It requires City Planning staff to take the lead on such matters but to consult with the local Councillor prior to any discussions with a developer.

Also of significance is that the City's policy only permits such benefits to be obtained from developers for capital projects, like playgrounds that serve the whole community when there is no City land available, rather than to support operational funding.

I also recommended the member consult the Toronto Lobbyist Registrar in case the residents' association's communications were Lobbying activity and they needed to register as a lobbyist.

8) *Letter of Reference for reappointment to a board*

A member asked if they could provide a letter of reference in support of a person seeking reappointment to one of the City's local boards. The member knew the person only through sitting on this same board.

I advised the member that the City's Public Appointments Policy states that members who provide references for potential board appointees and re-appointees are governed by the Code of Conduct and by Council's Policy on Council Members Providing Letters of Reference.

A member may provide a reference for someone if they have a prior employment, or other relevant non-personal relationship, independent from their role as a member. The Policy prohibits a member providing a reference for someone where they only know that person from working on a board with them. I also noted that, if a member believed that a Council policy should not apply in a particular situation, they could seek an exemption to the policy from Council.

I also advised that if a member wants to provide input on a proposed appointment, a member may do that in camera when an appointment is being considered by Council.

9) *Endorsing business owners of a specific ethnic community*

A business owner in a member's ward advised the member they wished to recognize and promote the contribution to the ward by several business owners of a specific ethnic community. The business owner asked the member to endorse their proposed advertising campaign and provide a quote supporting it. The member asked if they could do so.

The member provided me the draft promotional materials the business owner sent to them. I reviewed the materials and, while it had been said the campaign was to be broadly based, the materials centred around one particular business and the immediate family of that one business owner.

I advised that individual commercial endorsements are not appropriate. If the member was provided other materials showing the campaign would feature several business owners and recognize the contribution to the ward made by all members of that ethnic community, I advised that offering an endorsement would be acceptable.

10) *Responding to abusive and inappropriate communications*

A member asked me about how they could respond to abusive and inappropriate communications (in this case emails) directed to them and their staff.

Unfortunately, this is not an uncommon situation.

I advised it was important to address this in a timely manner to ensure the member's staff had a safe and appropriate work environment.

I advised that, if possible, a person communicating inappropriately or abusively should be put on notice that such communications were not acceptable and could result in service restrictions. This provides someone an opportunity to correct their behaviour.

I advised that, should someone not heed that caution, service restrictions should be put in place that are proportional and relevant to the circumstances. If service restrictions are imposed, the person should be advised of them. The restrictions should be tailored to the situation. In this case, the person could be told that inappropriate emails would not receive a response.

Service restrictions can be imposed for a limited time as a warning measure. Sometimes a "cooling off" period can adequately address the situation. If this does not work, the restriction can be made permanent. If communications are threatening, harassing or hate-

based/discriminatory, restrictions can be imposed immediately (i.e. without notice) and should be reported to the police.

I also suggested the member maintain a file/log of the person's communications so that if I received a complaint from that person about the member's actions, which has happened in the past, the reasons for the service restriction would be documented.

11) *Clarification about members of Council making submissions to the Committee of Adjustment*

A member asked me for clarification about the role Councillors can play with the Committee of Adjustment, following a discussion on the topic at a Council meeting.

I explained that Councillors are not prohibited from making submissions to the Committee of Adjustment but are advised to exercise caution when doing so.

I advised that if a member decided to make submissions, they member should do so in carefully crafted written submissions, rather than orally. They should make it clear that they respect the independence of the Tribunal, that they are not seeking to use their office to influence the result, but are writing to ensure that the Tribunal has the benefit of the Councillor's perspective.

The Code of Conduct prohibits members of Council from exercising improper influence over decision-makers. Because members of the Committee of Adjustment are appointed by Council, it could be seen as political interference to have a member of Council get involved with a matter at the Committee of Adjustment, unless it is done with great care.

Decisions of the Committee of Adjustment can be appealed to the Toronto Local Appeal Body (TLAB). Councillors are not to personally assist parties or appear before TLAB. Where an appeal raises significant concerns affecting the whole community, and a Councillor believes that it is in the public interest to advance a particular position at the TLAB, the Councillor may bring a motion to City Council to direct the City Solicitor to attend at the TLAB. Because Council has authority to direct the City Solicitor to appear before the TLAB and advocate a City position, community interest concerns can be articulated through Council motions and directions to staff in a manner that respects the independence of the TLAB members and is not an improper use of influence by a Councillor.

Members of Local Boards

In the examples below, the "Code of Conduct" refers to the *Code of Conduct for Members of Local Boards* or *Code of Conduct for Members of Adjudicative Boards*, as the situation dictates.

1) *Appearing as an expert witness at their own adjudicative board*

A member's client had a matter before their board and the client's lawyer wanted to call the member as an expert witness. The member asked if they could appear before their own Tribunal as an expert witness.

Because members of the City's adjudicative boards do not have full-time appointments, they often have outside businesses and professional practices and their clients are often aware of this fact

I advised that the member could not appear as an expert witness in any matters before their own adjudicative tribunal. The Code of Conduct requires members to avoid actual or perceived conflicts of interest and ensure members arrange their private affairs "in a manner that promotes public confidence and will bear public scrutiny."

If the member were to appear as an expert witness, the fact of their appointment would become an issue in the hearing. It could be used by the client as proof of the expertise of the member's proposed testimony or, by the opposing party to question the member's objectivity.

It would be problematic if the member was asked to provide an opinion on whether a decision of the tribunal was correct. It could reasonably be perceived that the member was offering an opinion as a member of that tribunal. It would not be possible to differentiate the member's private business interests from their official role.

There could be a reasonable perception that the member was using their status on an adjudicative board in aid of their private clients, which gives rise to two separate but related concerns under the Code of Conduct. This could be seen as indirectly deriving income by virtue of their appointment, contrary to Article IV (Gifts and Benefits) or as using their status as a public appointee to influence the tribunal they testify before for the personal benefit of their clients, contrary to Article X (Improper Use of Influence).

The member finally asked if they could appear as an expert witness in hearings on a similar subject matter by an appeal body. I said that would be permitted so long as it was for files that were "non-City of Toronto" matters.

2) *Distribution of a member's business' newsletter to board staff*

A member asked if it would be alright to share their business' newsletter with staff of their board.

I advised this was not appropriate.

The newsletter was not just a source of information but was also a form of marketing. It commercially promoted the member's business and the expertise of its team. It encouraged the reader to become a client.

For those reasons, I advised that both forwarding the newsletter to staff, or encouraging them to sign up to receive it (even it was free) would not be maintaining an appropriate separation between the member's duties on the board and their private interests.

3) *Adjudicative board member with a property interest in a company with a matter before their board*

In reviewing their board's agenda, a member saw that there was a matter involving a corporation in which their parent held shares. The member asked if they needed to declare an interest under the MCIA and recuse themselves.

I advised that the member did not need to declare a conflict or refrain from participating in the matter before the board.

The MCIA prohibits members from participating in any decision for which they have a direct or indirect pecuniary interest (section 5). If a member has a pecuniary interest in a matter that comes before their adjudicative board, they are required to disclose the interest (section 5.1 of the MCIA) and refrain from participating in the matter at all.

Section 3 of the MCIA deems the pecuniary interests (direct or indirect) of a parent, spouse or child of a member, if known to the member, to be the interests of the member. The MCIA also includes exemptions.

The shares held in the parent's retirement savings were for a very large and internationally diversified corporation, number held were modest, and were far from a controlling interest. The matter before the adjudicative board, regardless of what was decided, could not have materially affected share values or the dividends the family member might receive. The interest was so remote that it was exempted from being treated as a "pecuniary interest" within the meaning of the MCIA.

The Code of Conduct imposes obligations beyond the MClA's statutory requirements with respect to conflicts of interest. The Code of Conduct stipulates that members must avoid "conflicts of interest, both apparent and real" and that should "arrange ... private affairs in a manner that promotes public confidence and will bear close public scrutiny" (Preamble). However, in this case, those additional obligations did not require the member to refrain from involvement in this matter.

4) *Hiring someone working part-time for the BIA*

A Business Improvement Area board member asked if they could hire someone working for their BIA for their own business.

I advised that, if they offered employment to the board staff, they would have to do so in a way that did not exert undue pressure on that person.

I advised that, if hired, the member should pay this person at the market rate for these services and not take advantage of the person. Paying someone less than the market rate could be seen as an undue use of influence and a personal benefit for the member's business. I also reminded the member that they could not use confidential personal information about the person employed by the BIA that they learned by being on the board for their own benefit.

5) *Working for a board*

When a vacancy arose, a board member asked if they could apply for a position working for their board.

The member was involved in approving the job description, salary and selection process for filling the position and once those things were decided asked for advice if they could apply for the position. They asked if they could take a leave to apply for the position and resign if they got it.

I advised the member would be in a conflict of interest if the member were to apply for the position even if they were to take a leave of absence or resign.

The member was present and participated in confidential meetings where the board discussed the terms of employment and the selection process, which engages Article V (Disclosure and Use of Confidential Information). No one else was aware the member was interested in the job, and the member did not make a declaration of interest or leave meetings where the board discussed the hiring.

I advised that a reasonable person could conclude that the member's position on the board meant they had inside knowledge of the board's business and financial affairs that would make for an unfair advantage. This could breach the MCIA, as it would affect the member's financial interests. It could also appear the member was using their influence for their own personal benefit which is prohibited by Article VIII (Improper Use of Influence) and Article X (Conduct Respecting Current and Prospective Employment).

Taking a leave of absence or resigning from the board would not solve the conflict. Applying for a job just after leaving the team of hiring decision-makers would appear to be putting one's own interest above public duty, contrary to the good governance of the organization.

Appendix 2: Complaint/Application Summaries

The following summaries are provided to raise awareness of how the Codes of Conduct are interpreted and to provide the public and members with information about the work of the Office. These examples are anonymized to protect the confidentiality and privacy of the parties. They may not be a representative description of the complaints I receive because it is not possible to describe some complaints and maintain confidentiality.

1) *Post-service use of constituent information*

A person complained a former member of Council had broken Article V (Confidential Information) by emailing the person to announce the former member's intent to run for election at different level of government. The person had provided their email address to their then-Ward Councillor to receive information about a ward concern.

I dismissed the complaint because I do not have authority to investigate allegations about conduct taking place after Councillors have left office.

I verified the City's rules about former member's use of constituent information and shared this with the person. According to the City Clerk's policy, constituency information belongs to members personally, and there is no rule requiring members to dispose of constituency information before they leave office.

2) *An MPP's complaint about treatment during their public deputation*

A Member of Provincial Parliament (MPP) was unsatisfied with how three members of Council acted during the MPP's deputation to a City Committee. The MPP claimed the members' actions were contrary to Articles XI (Conduct at Council and Committee Meetings) and XIV (Discreditable Conduct).

I dismissed the complaint. The item the Committee was considering was a matter of ongoing political debate engaging all levels of government. Without interruption, the MPP read aloud a letter they had previously submitted to the committee. Next, members asked the MPP questions for about 20 minutes. The discussion was spirited but remained civil.

Though the MPP claimed to be deputing as a private citizen, their letter identified them as the MPP for their riding. In their deputation the MPP stated they were representing their constituents' views. Given the nature of the political debate on the issue, the questions the members asked the MPP ought not to have been unexpected.

There were insufficient grounds to warrant an investigation. Also, the Committee Chair is responsible for meeting decorum and calling members to order. My Office only has jurisdiction if Council or a committee adopts a motion directing me to investigate, or if the conduct continued beyond the committee meeting.

Because the MPP had spoken to the media about their complaint, I advised the Chair and the members involved, so they were aware of the outcome.

3) *Member conduct in a public consultation*

A person complained that a member of Council had violated Article XIV (Discreditable Conduct) in an online public consultation for a proposed development, by allegedly interrupting speakers, failing to respond to residents' questions and stating a need to "find money" for the developer.

I dismissed the complaint.

The person asked me to investigate the development application and to place a more senior staff on the file. Neither are remedies that I have in my power.

While raising one's voice or speaking over someone in a meeting is not welcome, it does not meet the description of bullying, harassment or intimidation in Article XIV (Discreditable Conduct). Further, members are free to take positions that differ from some of their constituents'. This is a political matter not governed by the Code of Conduct.

The member's statement about "finding money" related to the City's public attempts to increase the number of affordable housing units through financial incentives and other funding sources.

4) *"Blocking" a constituent on social media*

A person alleged a member of Council broke Article XIV (Discreditable Conduct) by blocking the person on Twitter and failing to respond to a request to remove the block. The person said the member's staff were rude when the person phoned to speak about the issue.

The person had replied to one of the member's tweets about the response to the COVID-19 pandemic. The person criticized one aspect of the response. The member then blocked the person. The person emailed and requested that the blocks be removed. In this call the staff were allegedly rude and said that my Office would never listen to someone like this person.

My office contacted the member, who believed that the block was necessary to counter misinformation about COVID-19. The person complaining told me they were not part of misinformation, just critical of the impact of some government decisions.

To resolve this, I encouraged the member to consider speaking with the complainant. When this eventually happened, the two were able to resolve the matter informally, with the block removed, and the person heard by their representative. The person withdrew their complaint.

5) *Ties with a local developer*

A person complained that a member of Council breached the Code of Conduct by failing to provide adequate notice of a public consultation and zoning amendments, and by allegedly acting in the interests of a developer.

It is the responsibility of the Toronto Public Service, not the councillor, to provide notice of public consultations so there was no violation of Article XV (Failure to Adhere to Council Policies and Procedures).

The person claimed the member was aligned with the developer involved and that the developer had been harassing the person. The person did not allege that the member themselves was harassing the person. This could not be discreditable conduct (Article XIV) under the Code of Conduct.

The person suspected the member had likely received an improper benefit from the developer, possibly during the member's campaign. I cannot investigate a matter based on mere speculation. Also, campaign contributions a listed exception to the rule against accepting gifts (Article IV).

The person also alleged the member was leaking confidential information to the developer contrary to Article V (Confidential Information), because their zoning amendment had been approved. Again, this was a suspicion not based on any evidence.

For the reasons noted above, I dismissed this complaint.

6) *A bump in the road ... non-compliance with City policy?*

A person complained that a member of Council had breached the Code of Conduct when they arranged for the installation of "speed humps" on a street without the usual community polling requirement.

I dismissed the complaint.

Article VIII (Improper Use of Influence) prohibits a member from improperly using the influence of their office for their benefit or for the benefit (or preferential treatment) of someone with whom they have a close relationship. In this case, the member did use their influence, but in a way that is an expected part of a member's normal activity. There was no allegation that the member or a close contact obtained a personal benefit.

Article XV (Failure to Adhere to Council Policies and Procedures) requires a member to follow City policies and procedures but also permits them to seek and obtain an exemption from a policy. In this case the member brought a motion to Community Council to waive the requirement for community polling. By doing so, the member complied with the requirement of Article XV.

7) *Comments about a colleague in a City Council meeting*

A person complained that a member of Council allegedly slandered another member in a City Council meeting and failed to apologize.

The person said that this conduct was contrary to Articles XI (Conduct at Council and Committee Meetings) and XIV (Discreditable Conduct). I dismissed the complaint because the responsibility for maintaining decorum and sanctioning members lies with the Speaker and the member who the person was concerned about had recourse to address any concerns they had about what was said. As a result, I do not have jurisdiction to investigate complaints alleging misconduct at a City Council meeting unless City Council adopts a motion requesting the Commissioner to investigate a member's conduct, or the conduct extended to activities outside the chaired meeting.

8) *Distasteful social media posts and blocking a constituent*

A person complained about several of a member of Council's social media posts and that the member had blocked the person after they were critical of the posts on social media.

There was no improper use of City property and other resources (Article VI) because the member's social media accounts were personal accounts, not owned by the City of Toronto. The posts did not directly relate to City business and their staff had not posted the content. Even if the posts were made using a City-issued device, the usage was isolated and the posts were removed. There was not a sufficient basis to investigate that allegations further.

There was no improper use of influence (Article VIII) as the conduct did not relate to a decision that would give the member, their family member or associate a material advantage.

The posts seemed to be personal comments. There were insufficient grounds to investigate this issue.

The various posts were rude, juvenile and / or distasteful. However, to find a statement is discreditable conduct under Article XIV (Discreditable Conduct) it must be abusive, bullying, or intimidating.

There was no failure to adhere to a Council policy or procedure (Article XV) when the member blocked the person for criticizing these posts on social media.

9) *Allegations board members benefited financially from their position on the Board*

A local Board member submitted Applications that two members of their board had violated the *Municipal Conflict of Interest Act* (“MCIA”) as they had allegedly received a pecuniary benefit.

I dismissed the Applications.

The person’s MCIA Applications declared they had known of the alleged violation for more than six weeks before submitting them.

Section 8(2) of the MCIA requires me to dismiss any Applications made more than six weeks after the person became aware of the alleged violation. I have no discretion to waive this statutory requirement.

10) *Alleged interference with CafeTO patio allocation*

A member of the Toronto Public Service filed an informal complaint that a member of Council had inappropriately interfered with the City process to evaluate and license a patio in the CafeTO program.

Café TO was a pandemic-time program created to allow curbside dining outside restaurants, to address public health limits on indoor dining due to COVID-19. The City staff person noted that the neighbouring establishments had successfully obtained patios to sustain business during the pandemic, but this restaurant was denied that opportunity.

My Office reviewed the correspondence and program rules and noted that the member’s office had been helpful, responsive and professional in dealing with the restaurant’s requests. The member’s office explained that this restaurant had past noise complaints from residential neighbours and thus had to obtain the consent of neighbours through a petition, and also suggested the restaurant work with the local BIA, an approach tactic which had been successful in similar cases.

After I spoke with the staff person they withdrew their complaint, understanding my evaluation that there was no evidence of misconduct and therefore I had no Code of Conduct issue to resolve. The member's actions had been appropriate to address residents' concerns.

Appendix 3: Letters to Members of Council

February 1, 2021

Sent via Email (No Original to Follow)

Members of Council
City of Toronto
Toronto City Hall
100 Queen St. W.
Toronto, ON M5H 2N2

Members of Council:

Re: Environment Days 2021

At this time of year, many members of Council are working with Solid Waste Management Services ("SWMS") to host Community Environment Days. This letter includes some reminders about common issues that arise in relation to Environment Days.

Working with SWMS

Environment Days are co-sponsored with SWMS. That means:

- Members need to follow SWMS' internal guidelines (attached). This year, the internal guidelines also reflect procedures relating to COVID-19.
- Before inviting any group to participate in an Environment Day, members should first consult with SWMS staff about possible invitees to ensure that each invitee is suitable and consistent with the program objectives.
 - If, following this consultation with SWMS, members decide to offer additional services at the event, they must do so in accordance with the Constituency Services and Office Budget Policy.

Dealing with Unsolicited Requests

Members are sometimes contacted by groups that wish to offer or showcase products, initiatives or services at Environment Days. Members should exercise caution when responding to these unsolicited offers. To gain visibility, a vendor may offer a service to a member at a discounted rate—which would constitute a benefit or donation to the member. Such vendors may also be lobbyists within the meaning of the *Lobbying Bylaw*, who are thereby barred from offering any benefit or donation to members of Council. For this reason,

members should confirm that vendors who solicit goods or services are referred to the Toronto Lobbyist Registrar to seek advice about its registry and the *Lobbyists' Code of Conduct* and ensure that any goods and services are purchased at market value. Members can determine market value informally, such as by obtaining quotes for similar services. Similar concerns also arise when not-for-profit entities solicit opportunities at Environment Days.

Environment Days are sometimes seen as opportunities for businesses and other groups to raise awareness of their business or cause. Members of Council – who represent all interests – may be asked why a particular business or group has been provided the Environment Days platform. Therefore, if you wish to accommodate any such requests, you must be prepared to answer questions from the public about why you selected the group to appear. My advice is that you plan ahead, recognize that you are accountable for the complement of groups that appear, and make choices that appear equitable and can be easily explained. I am available to you and your staff to help you weigh the pros and cons of each request.

Donations

Members are reminded that any requests for donations (such as food, beverages, prizes etc.) must be made in accordance with the [Council Member-Organized Community Events Policy](#), and, therefore, donations from lobbyists cannot be accepted. Importantly, members should not ask third parties or SWMS to seek such donations.

When in Doubt, Seek Advice

As noted, I am available to you to provide case-specific confidential advice. You can reach me at Jonathan.Batty@toronto.ca or 416-397-7770.

Best wishes for a successful Environment Day season!

Yours truly,

Jonathan Batty

Integrity Commissioner

Enclosure (1): City of Toronto Environment Day Program Internal Guidelines (2 pages)

c.c.: Cristina De Caprio, Lobbyist Registrar
Grace Young, Acting Deputy City Clerk, Strategic Integration & Excellence
Derek Tung, Supervisor, Solid Waste Management Services
Matt Keliher, General Manager, Solid Waste Management Services

Lisa Duncan, Director, Solid Waste Management Services, Collections and Litter Operations

Emily LeBlanc, Manager, Solid Waste Management Services, Curbside Collections District 1 & 2 and Front-End Collections City Wide

City of Toronto Environment Day Program Internal Guidelines

As a reminder, Community Environment Days are organized and operated by Solid Waste Management Services. As such, event policies are consistent with City of Toronto and Solid Waste Management Services' policies.

All Community Environment Day participants are to abide by these policies and procedures:

1. **COVID 19 Safety Procedures**

- In an effort to slow down the transmission of COVID 19, SWMS in consultation with Toronto Public Health will provide Environment Day specific guidelines for City and Council staff to abide by in order to create a safe and healthy work environment for staff and residents.
- Physical distancing and wearing face masks are required while attending an event space.
- Provincial and Municipal protective health measures will be followed. As the protective health measures surrounding COVID 19 change, procedures are subject to change to ensure compliance.
- For more information, please visit: <http://insideto.toronto.ca/coronavirus/index.htm>

2. Office of the Integrity Commissioner

- All City staff and Council staff shall be compliant to the high standards of conduct set out by The Office of the Integrity Commissioner
- For more information, please visit: www.toronto.ca/integrity

3. Purchasing Materials Management Division procedures

- As per PMMD procedures, the procurement of goods must be made in a fair and competitive process through proper RFP's and RFQ's;
- City and Council staff must refrain from permitting groups from selling/offering goods and services for monetary gain;
- For more information please visit <http://insideto.toronto.ca/purchasing/index.htm>

4. Anti-scavenging policy

- SWMS does not allow the scavenging of waste;
- Scavenging is also not permitted under Environmental Protection Act R.R.O 1990, Regulation 347;
- For more information, please visit <http://insideto.toronto.ca/solidwaste/pnp/memo-anti-scavenging-policy.pdf> or <https://www.ontario.ca/laws/regulation/900347>

5. Permit rules, regulations and conditions

- All City and Council staff shall abide by the rules, regulations and conditions stipulated by the permit for the issued Environment Day location.
6. City Clerk's Office protocols
 - All City and Council staff shall refrain from endorsing any politician or political activity;
 - For more information, please visit <http://insideto.toronto.ca/clerks/>
 7. Office of Lobbyist Registrars policy
 - Lobbying By-Laws must be adhered to at all times;
 - For more information, please visit <http://insideto.toronto.ca/lobbyist-registry/index.htm>
 8. Guidelines for community groups
 - Community Environment Days is a program designed to promote and educate the public on various waste diversion initiatives as well as raising awareness about ongoing environmental issues;
 - We ask that when inviting groups to attend events, that they are related to the theme of the Community Environment Day program;
 - Please ensure all groups adhere to and sign the "Community Group Participation" Release and Waiver form prior to their arrival. Failure to do so can result in a refusal of their attendance;
 - All participants should report to the event Supervisor upon arrival. No unauthorized person may climb into event trailers or bins. The on-site Supervisor has the authority to ask a person to refrain from any activities deemed unsafe.

We ask that all staff members abide by these policies and procedures. If there are questions or concerns, feel free to contact Derek Tung, Environment Day Supervisor (Derek.Tung@toronto.ca). Thank you for taking part in the City of Toronto Community Environment Day program.

March 17, 2021

Sent via Email (No Original to Follow)

Members of Council
City of Toronto
Toronto City Hall
100 Queen St. W.
Toronto, ON M5H 2N2

Dear Members of Council:

Re: Working Together

In the early days of the pandemic, I wrote to you to acknowledge the unforeseen issues you were facing and to offer practical advice under the *Code of Conduct for Members of Council*. I said then: “These are challenging times and members of Council and City staff have risen to this challenge. Patience and respect when working together is especially appreciated to address the challenges we all face.”

I am writing now, as we enter the second year of this emergency and on the verge of another wave of the pandemic, to offer some additional advice. I am also copying the City Manager on this letter so that it may be shared with the Toronto Public Service.

You know the personal costs paid by Torontonians over the last year. To help them, Council and City staff working together have accomplished many things. In doing so, members of Council have not compromised their ideals and policy objectives when matters are debated. History shows that governments, even at times of great crisis, must not sacrifice democratic debate and accountability.

My role is to provide advice about proper conduct and decorum.

The current emergency tests members of Council and City staff in ways no one had predicted. In their day-to-day work, members may not get answers and information as easily as they once did. Because meetings are being conducted remotely, the time limits to ask questions and obtain answers from staff at Council meetings can also be more challenging. In turn, managers and staff throughout the Toronto Public Service continue to face unique demands when delivering services to the public. The pandemic has also affected everyone’s personal lives and well-being.

Understandably, members of Council and City staff are tired and make human mistakes. Remote work is alienating. Technical issues in virtual meetings cause problems. At the

Council meeting on March 10, 2021, many frustrations were given voice in pointed words over the course of its 12-hour session.

Integrity commissioners have in the past spoken about the need to maintain decorum at Council meetings and show respect towards City staff. In that spirit, I offer some objective observations. Marathon-like meetings, which run into the night, are problematic because the participants get tired and misspeak and also mishear what is said. People make mistakes that need to be corrected on the record or after the meeting. People make unguarded comments because of fraying patience, which may generate a retaliatory response. Technical issues compound these problems. These are not the finest hours of City government, at a time that calls for our finest hour.

I encourage members of Council and City staff to be patient and continue to acknowledge and respect the contributions each make. I recommend they consider practical ways to allow each other sufficient time and space to do their work. Remote Council meetings conducted late into the evening, for matters that are not an emergency, have proved not to work well. I recommend members and City staff constructively consider how to improve Council meetings and their other dealings with each other. Unless they do, frustrations may further escalate and need to be addressed more formally, which will detract attention from the important tasks at hand.

The public is best served when members of Council and City staff observe the highest standards of ethical conduct, mutual respect and patience when working together. The last year has demonstrated that, when they do, the challenges facing the people of Toronto are most effectively addressed.

Yours truly,

Jonathan Batty
Integrity Commissioner

c.c.: Chris Murray, City Manager

Sent via Email

From: Jonathan Batty <Jonathan.Batty@toronto.ca>

Sent: October 22, 2021 2:22 PM

To: Councillors and Mayor

Cc: Integrity integrity@toronto.ca

Subject: Reminders about hosting Community Events from the Office of the Integrity Commissioner

Dear Members of Council,

With the potential of eased restrictions for holding events and gatherings, I wanted to provide a reminder for you and your staff about City Council's [Council Member-Organized Community Events Policy](#).

When you decide to hold a Community Event, and wish to accept donations to support the activity, please advise my Office of the proposed donor *before* you accept the gift and submit a completed [Donor Declaration Form](#). I suggest this because, if you have received the donation and we determine it is an impermissible gift (for example because it is from a registered lobbyist or someone with an application before the City), the donation has to be returned.

As a reference, you may wish to consult my Office's [Frequently Asked Questions – Donations to Council Member-Organized Community Events \(2009\)](#).

Also, please send us a copy of the notice for your Community Event so we can be sure it is advertised in accordance with Council's policy.

Please let my Office know if you have any questions or if we can assist by providing additional information.

Yours truly,

Jonathan Batty

December 10, 2021

Dear Members of Council and Staff:

Re: Gifts in the 2021/2022 Holiday Season

In prior years, as the holiday season has approached, our Offices have provided advice about receiving gifts and attending events during the holidays. Members of Council/staff may be offered invitations and or sent gifts, please remember that:

Under the Lobbying By-law, no lobbyist or client of a lobbyist, or any parent, subsidiary, affiliate, officer or employee of any lobbyist or client of a lobbyist shall directly or indirectly offer, provide or bestow entertainment, gifts, meals, trips or favours of any kind to a public office holder.

Under the Code of Conduct for Members of Council, members have a companion obligation not to receive such gifts or benefits of any value from lobbyists.

Further, members are reminded that they are not permitted to receive a gift or benefit from any other source unless one of the exceptions set out in Article IV of the Code of Conduct applies.

If offered a gift or benefit of any value, members of Council and their staff should be aware of the Lobbying By-law and their own Code of Conduct obligations. This may mean politely declining gifts or benefits. Please review the Gifts and Benefits Procedure at-a-Glance for more information about the process.

Members of Council should contact the Integrity Commissioner at Jonathan.Batty@toronto.ca or 416-397-7770 for specific advice about receiving gifts or soliciting donations for community events (even if the event is not an in-person activity). When they are planning to hold a community event, advice should be sought before asking or accepting donated gifts and benefits from individuals and organizations (including agencies and organizations of the City of Toronto).

Please contact the Lobbyist Registrar, Cristina De Caprio at Cristina.DeCaprio@toronto.ca or 416-338-5865 for advice on the provisions of the Lobbying By-law relating to gifts and invitations; to ask if someone is a lobbyist or the client of a lobbyist; or to report that a lobbyist has offered or provided a gift, meal, entertainment or favour in breach of the Lobbying By-law.

Jonathan Batty
Integrity Commissioner

Cristina De Caprio
Lobbyist Registrar

Appendix 4: 2021 Expense Budget

City of Toronto														
Integrity Commissioner Office Expense Budget														
Actuals January - December 2021														
Charged to Cost Centre IG0001														
OFFICE OF THE INTEGRITY COMMISSIONER														
Cost Element	Cost Element Name	January '21	February '21	March '21	April '21	May '21	June '21	July '21	August '21	September '21	October '21	November '21	December '21	January - December '21
		Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Actuals	Totals
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
1015	Full Time Regular Pay	12,927.10	32,317.74	32,317.76	32,317.75	32,317.77	48,476.65	32,317.75	32,324.61	38,078.42	37,525.81	37,525.80	75,558.59	444,005.75
1050	Permanent - Performance Bonus								4,591.54	586.23	553.08	553.08	381.27	6,665.20
1711	Comprehensive Medical	322.06	805.14	805.14	805.14	805.14	1,207.71	805.14	694.87	681.64	681.64	681.64	2,052.21	10,347.47
1712	Dental Plan	174.05	435.12	435.12	435.12	435.12	652.68	435.12	376.26	369.20	369.20	369.20	1,111.56	5,597.75
1720	Long Term Disability	279.62	699.06	699.06	699.06	699.06	1,048.59	699.06	585.95	572.38	572.38	572.38	1,445.44	8,572.04
1730	Group Life Insurance	96.69	250.26	250.26	250.26	250.26	375.39	250.26	209.65	204.78	204.78	204.78	517.54	3,064.91
1740	Employment Insurance	596.32	596.32	596.32	441.30	298.26	248.30	108.06	211.91	269.92	256.96	256.96	338.38	4,219.01
1745	EI Rebate	19.91	49.78	49.78	36.86	24.90	20.74	9.02	8.12				25.82	244.93
1750	Ontario Health Tax	254.35	636.04	636.04	635.79	635.56	953.03	635.26	724.12	757.96	746.54	746.54	1,491.43	8,852.66
1760	Canada Pension Plan	1,733.20	1,733.66	1,733.66	1,404.83	859.78	866.18	307.46	548.47	628.39	603.80	603.80	792.33	11,815.56
1770	Pension Plan (OMERS)	1,583.05	3,958.88	3,958.88	3,958.88	3,958.88	5,938.31	3,958.88	3,442.08	3,362.58	3,362.58	3,362.58	8,214.91	49,060.49
	Total Salaries and Benefits	17,986.35	41,482.00	41,482.02	40,984.99	40,284.73	59,787.58	39,526.01	43,717.58	45,511.50	44,876.77	44,876.76	91,929.48	552,445.77
2010	Stationery													-
2020	Books & Magazines													-
2040	Paper & Print Supplies													-
2082	Health & Safety Supplies									1,111.19				1,111.19
2570	Janitorial Supplies													-
2610	Kitchen Supplies													-
2999	Miscellaneous Materials													-
3410	Computers - Hardware													-
3420	Computers - Software					698.36				477.95		(138.70)	(299.67)	737.94
4010	Professional Services - Legal													-
4086	Translation & Interpreters													-
4122	Transcripts													-
4132	Conduct Money													-
4144	Investigative Expense					3,459.84	5,952.96							9,412.80
4199	Professional & Technical Services								324.36			637.27	22.90	984.53
4256	Conference/Seminar - Registration Fee					198.00						595.30	535.98	1,329.28
4310	Training & Development - External		1,109.18				305.28							1,414.46
4340	Tuition Fees					619.78							649.64	1,269.42
4416	Transfer, Haulage & Storage							39.69						39.69
4473	Managed Print Charges									0.83				0.83
4474	Computer Software Maintenance												140.11	140.11
4760	Membership Fees		591.05	1,905.96										2,497.01
4804	Wireless Devices													-
4805	Postage				27.88									27.88
4811	Cellular Phones		117.02		117.75	57.48	58.90	58.72	58.77	58.79		58.16	117.40	702.99
4827	Online Services Fees				70.93									70.93
4995	Other Expenses													-
6030	Contribution to Reserve Funds												90,000.00	90,000.00
6031	Contribution - Insurance Reserve Fund						1,642.39			(1,642.39)				-
	Total Office Expenditures	\$ -	\$ 1,817.25	\$ 1,905.96	\$ 216.56	\$ 5,033.46	\$ 7,959.53	\$ 98.41	\$ 383.13	\$ 6.37	\$ -	\$ 1,801.67	\$ 90,516.72	\$ 109,739.06
	Total Monthly Expenditures	\$ 17,986.35	\$ 43,299.25	\$ 43,387.98	\$ 41,201.55	\$ 45,318.19	\$ 67,747.11	\$ 39,624.42	\$ 44,100.71	\$ 45,517.87	\$ 44,876.77	\$ 46,678.43	\$ 182,446.20	\$ 662,184.83
9260	Contribution from Reserve Fund												(22,513.98)	(22,513.98)
	Other Revenues	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ (22,513.98)	\$ (22,513.98)
	Net Expenditures	\$ 17,986.35	\$ 43,299.25	\$ 43,387.98	\$ 41,201.55	\$ 45,318.19	\$ 67,747.11	\$ 39,624.42	\$ 44,100.71	\$ 45,517.87	\$ 44,876.77	\$ 46,678.43	\$ 159,932.22	\$ 639,670.85