

Clause embodied in Report No. 14 of the Administration Committee, as adopted by the Council of the City of Toronto at its regular meeting held on November 26, 27 and 28, 2002.

5

**Approval of a Complaint Protocol
for Council's Code of Conduct**

(City Council, at its regular meeting held on November 26, 27 and 28, 2002, adopted this Clause, without amendment.)

The Administration Committee recommends the adoption of the Recommendations of the Ethics Steering Committee embodied in the following communication (October 30, 2002) from the City Clerk, subject to amending the Recommendations to read as follows:

“It is recommended that:

- (1) Council adopt the attached report (October 24, 2002) from the Ethics Steering Committee respecting the approval of a Complaint Protocol for Council’s Code of Conduct;**
- (2) the City Solicitor, in consultation with the Chief Administrative Officer and the City Clerk, be requested to submit an annual information report to the Ethics Steering Committee on the Complaint Protocol process;**
- (3) in March, 2004, the Ethics Steering Committee be requested to report to the Administration Committee with a review of the Complaint Protocol, and if warranted, review the appointment of an Integrity Commissioner for the City of Toronto; and as part of this review, the City Solicitor and the Chief Administrative Officer be requested to assess the appropriateness of the Act for an Integrity Commissioner; and**
- (4) in the meantime, authority be granted for application to be made for special legislation from the Province to establish a City Integrity Commissioner similar to the Provincial model.”**

The Administration Committee submits the following communication (October 30, 2002) from the City Clerk:

Recommendations:

The Ethics Steering Committee recommends to the Administration Committee that Council:

- (1) adopt the attached report (October 24, 2002) from the Ethics Steering Committee respecting the approval of a Complaint Protocol for Council's Code of Conduct;
- (2) request the City Solicitor, in consultation with the Chief Administrative Officer and the City Clerk, to submit an annual information report to the Ethics Steering Committee on the Complaint Protocol process;
- (3) review the appointment of an Integrity Commissioner for the City of Toronto in two years time; and
- (4) in the meantime, grant authority for application to be made for special legislation from the Province to establish a City Integrity Commissioner similar to the Provincial model and that the City Solicitor and Chief Administrative Officer develop the required Draft Act.

The Ethics Steering Committee reports having requested the City Solicitor to provide members of the Administration Committee with a copy of the 2001-2002 Annual Report of the Office of the Integrity Commissioner, Ontario.

Background:

At its meeting on October 30, 2002, the Ethics Steering Committee gave consideration to a report (October 24, 2002) from the Ethics Steering Committee addressed to the Administration Committee, reporting on a Complaint Protocol to process complaints alleging breaches of the Code of Conduct by member of Council, advising of steps to determine the merit of a complaint, as well as timeframes, duties, roles and authorities of an external investigating party are recommended, further advising that the Complaint Protocol does not provide education or advice to the public or Council members on interpretation of the Code, or potential conflict of interest situations and recommending that:

- (1) consistent with its Terms of Reference, the Ethics Steering Committee be charged with the responsibility of recommending to Council, the protocols, by-laws and policies governing the ethical behaviour of members of Council;
- (2) consistent with its Terms of Reference, neither the Ethics Steering Committee nor any other Council body or individual (including a City employee) shall have a role in the investigation or adjudication of the ethical behaviour of another member of Council, with the one exception noted in Recommendation No. (3);

- (3) external legal counsel investigating Council Code of Conduct complaints, shall operate in an arm's length capacity from Council and the Mayor's office except that, Council will make the final decision on whether any penalty (as may be recommended by the investigator) is imposed on the member found to have contravened the Code of Conduct;
- (4) the Complaint Protocol presented in Appendix 1 be approved for implementation including its provisions for both an informal complaint process, and a formal process that requires a supporting affidavit, uses the services of external legal counsel, provides a settlement role for the external consultant, and specifies reporting procedures and timeframes, conditions respecting payment of legal costs, and a role for ESC to convey the report to Council and advise on the extent of public disclosure;
- (5) complaints received to-date shall be processed in accordance with the recommended Complaint Protocol upon submission by complainants of a supporting affidavit;
- (6) the cost of processing any complaints under the recommended Complaint Protocol during the year 2002, be absorbed in the Council budget of the Clerk's Division since funds have been confirmed as available for this purpose;
- (7) funding for the year 2003 in the amount of \$65,000.00, and an appropriate amount in subsequent years, be provided in the Council budget of the Clerk's Division to undertake Council Code of Conduct complaint investigation and processing in accordance with the recommended Complaint Protocol;
- (8) consideration be given to the future establishment of a part-time City Integrity Commissioner to assess and investigate Code of Conduct complaints, advise Council members on potential Code of Conduct conflict of interest situations, operate with certain exemptions from *Municipal Freedom of Information and Protection of Privacy Act* requirements, and publish an annual report on the findings of typical cases/inquiries; and the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

The Committee also had before it the communication (October 8, 2002) from the City Clerk, Administration Committee advising that the Administration Committee, at its meeting on October 8, 2002:

- (I) amended Recommendation No. (8) embodied in the communication (June 20, 2002) from the City Clerk, Ethics Steering Committee to read as follows:
 - “(8) the cost of processing any complaints under the proposed Interim Complaints Procedure during the year 2002, be absorbed by the Council Budget since funds have been confirmed as available for this purpose;”
and
- (II) referred the aforementioned communication, as amended, back to the Ethics Steering Committee with a request that the Ethics Steering Committee:

- (1) develop the Interim Complaint Procedure as a stand-alone process in the absence of a City Integrity Commissioner function; and
- (2) reconsider the recommendations within the context of having the Interim Complaint Procedure established as a stand-alone process.

(Report dated October 24, 2002, addressed to the Administration Committee, entitled “Approval of a Complaint Protocol for Council’s Code of Conduct”.)

Purpose:

To respond to a request from Administration Committee for a recommended Complaint Protocol to process complaints alleging breaches of the Code of Conduct by members of Council. Steps to determine the merit of a complaint, as well as timeframes, duties, roles and authorities of an external investigating party are recommended. The Complaint Protocol does not provide education or advice to the public or Council members on interpretation of the Code, or potential conflict of interest situations.

Financial Implications and Impact Statement:

External legal consultants will be retained to undertake complaint investigations against members of Council where warranted under the Code of Conduct. The estimated cost per complaint, is approximately \$8,000.00 for fees and disbursements. Some complaints may involve a full investigation involving settlement, or (limited) legal fee repayments with associated greater costs (up to approximately \$20,000.00 per complaint).

For 2002, the City Clerk’s division has confirmed it can absorb the estimated cost within its approved Council budget. Future year impacts, up to \$65,000.00 in 2003, and in subsequent years, should be provided for in the Council budget of the City Clerk’s division for the purpose of processing complaints pertaining to Council’s Code of Conduct. The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) consistent with its Terms of Reference, the Ethics Steering Committee be charged with the responsibility of recommending to Council, the protocols, by-laws and policies governing the ethical behaviour of Members of Council;
- (2) consistent with its Terms of Reference, neither the Ethics Steering Committee nor any other Council body or individual (including a City employee) shall have a role in the investigation or adjudication of the ethical behaviour of another member of Council, with the one exception noted in Recommendation No. (3);

- (3) external legal counsel investigating Council Code of Conduct complaints, shall operate in an arm's length capacity from Council and the Mayor's office except that, Council will make the final decision on whether any penalty (as may be recommended by the investigator) is imposed on the member found to have contravened the Code of Conduct;
- (4) the Complaint Protocol presented in Appendix 1 be approved for implementation including its provisions for both an informal complaint process, and a formal process that requires a supporting affidavit, uses the services of external legal counsel, provides a settlement role for the external consultant, and specifies reporting procedures and timeframes, conditions respecting payment of legal costs, and a role for ESC to convey the report to Council and advise on the extent of public disclosure;
- (5) complaints received to-date shall be processed in accordance with the recommended Complaint Protocol upon submission by complainants of a supporting affidavit;
- (6) the cost of processing any complaints under the recommended Complaint Protocol during the year 2002, be absorbed in the Council budget of the Clerk's Division since funds have been confirmed as available for this purpose;
- (7) funding for the year 2003 in the amount of \$65,000.00, and an appropriate amount in subsequent years, be provided in the Council budget of the Clerk's Division to undertake Council Code of Conduct complaint investigation and processing in accordance with the recommended Complaint Protocol;
- (8) consideration be given to the future establishment of a part-time City Integrity Commissioner to assess and investigate Code of Conduct complaints, advise Council members on potential Code of Conduct conflict of interest situations, operate with certain exemptions from *Municipal Freedom of Information and Protection of Privacy Act* requirements, and publish an annual report on the findings of typical cases/inquiries; and
- (9) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

On September 28 and 29, 1999, Council approved a Code of Conduct for Members of Council - Inclusive of Lobbyist Provisions. In summary, this provided:

- (i) a Code of Conduct consistent with, and supplementary to, legislative requirements that include specific standards of conduct pertinent to members' official duties;
- (ii) expectations for dealing with lobbyists;
- (iii) inclusion of ethical matters and provisions in the purchasing procedure report; and
- (iv) creation of an Ethics Steering Committee to recommend a process for monitoring the implementation of the Code of Conduct and considering additional related policy matters.

The ESC reported its findings and recommended model for a City Integrity Commissioner to the June 25, 2002, meeting of the Administration Committee in a report titled "Establishment of a Future City Integrity Commissioner and an Immediate Interim Complaint Procedure Respecting the Code of Conduct for Council Members". At that meeting, Administration Committee recommended that a Code of Conduct complaint process be approved and not an Integrity Commissioner model. Upon consideration by Council at its meeting of July 30, 31 and August 1, 2002, as Item q of Clause No. 37 Report No. 10 of The Administration Committee, the matter was referred back to the Administration Committee for further consideration.

Accordingly, the ESC report appeared on the agenda of the September 10, 2002, meeting of the Administration Committee. The Committee deferred re-consideration of the report and requested a presentation on the recommended model. The presentation took place at the October 8, 2002, meeting of Administration Committee, and ESC was again requested to:

- (i) develop the Interim Complaint Procedure as a stand-alone process in the absence of a City Integrity Commissioner function; and
- (ii) reconsider the recommendations [in the aforementioned report] within the context of having the Interim Complaint Procedure established as a stand-alone process.

Comments:

- (a) Summary of ESC Role and Process:

Council approved the following principles for the ESC in the development of a Protocol for formal complaint investigation of alleged Council member contravention of the Council Code of Conduct:

- (i) consistent and fair consideration and response to both complainants and members;
- (ii) objective and reasonable steps to determine if a complaint merits investigation; and
- (iii) avoidance of any conflict of interest by the Mayor, the ESC, other members of Council and staff of the City by ensuring they shall not have any involvement in the actual investigation of an alleged complaint.

In addition, Council approved that the ESC functions shall include review and recommendations for amendments or additions of policies to the Code of Conduct covering member requirements, inclusive of recommending penalty provisions for approval by Council.

It is, therefore, recommended that consistent with its Terms of Reference, the ESC be charged with the responsibility of recommending to Council, the protocols, by-laws and policies governing the ethical behaviour of members of Council.

It is also recommended that, consistent with its Terms of Reference, neither the Ethics Steering Committee nor any other Council body/individual (including a City employee) shall have a role in the investigation or adjudication of the ethical behaviour of another member of Council, with one exception. The exception is that Council shall make the final decision on whether any penalty that may be recommended by external legal counsel, is imposed on a member found to be in contravention of the Code of Conduct for Council Members.

(b) Options Considered to Investigate Complaints:

The ESC has been charged with developing a Protocol whereby a third party investigates complaints respecting alleged contravention by a Council member of the Code of Conduct. The options considered by ESC were to:

- (1) Explore whether the Provincial Integrity Commissioner could also act in the capacity of Integrity Commissioner for the City of Toronto;
- (2) Request the Province of Ontario to establish a Municipal Integrity Commissioner;
- (3) Request the Association of Municipalities of Ontario to consider establishing a Municipal Integrity Commissioner;
- (4) Establish an in-house responsibility at the City of Toronto; and
- (5) Request the Province to permit the City to establish its own Integrity Commissioner.

In making its recommendation, ESC determined that the establishment of a Code of Conduct advisory function for Council members would be valuable, as would the availability of consistency for complaint investigation respecting the Code of Conduct. Accordingly, the ESC selected the fifth option for the City of Toronto, the establishment of an Integrity Commissioner. In order to address complaints during the time period required to establish an Integrity Commissioner, the ESC recommended an Interim Complaint Procedure. The interim procedure was premised upon using the services of external legal counsel for complaint investigation only.

The Administration Committee requested that the Interim Complaint Procedure be re-worked and recommended as the only method to deal with complaints filed against a member of Council alleged to be in contravention of the Council Code of Conduct. Accordingly, a Complaint Protocol is presented for implementation in the absence of an Integrity Commissioner model.

(c) The Complaint Protocol:

The Complaint Protocol detailed in Appendix 1 to this report consists of both informal and formal complaint processes. The formal complaint process requires complaints to be submitted in writing and specifies the types of relevant facts for inclusion in the supporting affidavit. The submission and reporting timeframe conditions specified are similar to those used by the Provincial Integrity Commissioner. Among requirements specified, is a role for the ESC to classify complaint type in consultation with the City Solicitor to ensure the City has jurisdiction.

For example, a complaint must be assessed to make an initial determination as to whether it falls within the jurisdiction of the Council Code of Conduct, or under a separate policy of the City, or whether it is actually a complaint respecting conflict of interest legislation, or one that is of a criminal or corruption nature that should be referred to the police. The ESC, with the advice of the City Solicitor, should identify/classify the type of any complaint received in order to initiate the formal Complaint Protocol.

Of primary importance, is that no other investigation shall be commenced by Council, or its Committees into a matter that has been referred to an external counsel under the Complaint Protocol. Similarly, no investigation shall be conducted by external counsel under the Complaint Protocol into a matter determined by him or her to be the jurisdiction of the police, or other body.

As a result of legal limitations (see section (e) below), the formal Complaint Protocol does not provide for fixed penalties for findings of Code of Conduct breaches. The report from an external legal counsel, however, could still include recommendations that have a penalty impact. It could, for example, require reimbursement of the City for materials used for a non City-business purpose. For this reason, an external counsel investigating the complaint has been given a role in attempting to settle the complaint under section 4 of Appendix 1. This role goes beyond a simple determination (section 6) that a member is not blameworthy.

Payment of legal costs of the complainant and respondent up to \$5,000.00 is also provided for in the Protocol, but only if, for the complainant, the external consultant concludes that the complaint is not frivolous, vexatious or made in bad faith and only if, for the member of Council, the external consultant concludes that there has been no contravention by that member. Council has the authority to increase the amount based on the facts of the case and subject to the preceding conditions having been concluded in the report of the external consultant.

The Complaint Protocol provides that the report of the external consultant shall be filed with the ESC to ensure proper and timely reporting to Council, without comment, endorsement or editing by the ESC. In order to ensure, to the degree possible within the parameters of the *Municipal Freedom of Information and Protection of Privacy Act*, that a breach of the Code of Conduct is made public by the Council, the ESC may recommend on this aspect of disclosure to the Council when conveying the report of the external consultant.

It is, therefore, recommended that the Complaint Protocol presented in Appendix 1 be approved including its provisions for both an informal complaint process, and a formal process that uses the services of external legal counsel, provides a settlement role for the external consultant, and specifies reporting procedures and timeframes, conditions respecting payment of legal costs, and a role for ESC to convey the report to Council and advise on the extent of public disclosure.

It is further recommended that, complaints received to-date shall be processed in accordance with the recommended Complaint Protocol upon submission by complainants of a supporting affidavit. The City Solicitor is developing a form affidavit that may be used for this purpose.

(d) Estimated Cost of Establishing the Interim Complaint Procedure:

The estimated cost per complaint investigation under the Interim Complaint Procedure using external legal counsel, is approximately \$8,000.00 for fees and disbursements. This cost estimate has been based on the average hourly rate of \$400.00 for legal consultants and assumes 15-20 hours on average for reviewing the filed materials, conducting any other necessary investigations and interviews and preparing the report. It is anticipated that less than 4 complaints per year of this nature would proceed to a full investigation requiring settlement and the associated greater costs based on the time involved (up to \$20,000.00 per complaint).

Discussion indicates that funding for the purpose of Code of Conduct complaint investigation using external legal counsel is available within the approved Council budget of the Clerk. It is, therefore, recommended that the cost of processing any complaints under the recommended Complaint Protocol during the year 2002 be absorbed in the Council budget of the City Clerk.

(e) Limitations on Information Disclosure and the Imposition of Penalties:

The *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA), limits the type of information about a request for an inquiry and the resulting report that can be filed as part of the public agenda. For example, the Director of Corporate Access and Privacy has advised that a complaint about any person is the personal information of the individual against whom the complaint is directed and the complainant. As a result of this, both parties would have to consent to the public disclosure of the complaint, if the complainant, like the member, is identified or identifiable. A special legislation request for exemptions to these aspects of MFIPPA would have been made under the Integrity Commissioner model originally recommended by the ESC.

The absence of special legislation also limits the types of penalties that can be imposed. For example, the *Municipal Act* does not contain specific provisions similar to the (Provincial) *Member's Integrity Act* that permit a reprimand or exclusion from Council meetings except in subsection 55(4) [241(2) *Municipal Act, 2001*], which permits the presiding officer to expel any person for improper conduct at a meeting. MFIPPA also has the effect of limiting Council's ability to censure activities subject to complaint, unless it is clear the member of Council concerned cannot be identified.

It is for these reasons, as well as the advisory and education roles envisaged that the ESC originally recommended an Integrity Commissioner model. Specifically, under an Integrity Commissioner model, members would have had access to advice respecting potential conflict of interest situations related to the Code of Conduct with confidentiality around these personal, individual inquiries assured. At the same time, special legislation

granted by the Province would have provided for the public disclosure of certain aspects of complaint investigation and findings. In addition, unlike the Complaint Protocol now being recommended, the Integrity Commissioner would have published an annual report on 'typical' complaint cases and findings, and common types of inquiries about potential conflict of interest situations. Such publication would have provided a preventative and educational function for the public and elected officials.

It is, therefore, recommended that consideration be given to the future establishment of a part-time City Integrity Commissioner to assess and investigate Code of Conduct complaints, advise Council members on potential Code of Conduct conflict of interest situations, operate with certain exemptions from *Municipal Freedom of Information and Protection of Privacy Act* requirements, and publish an annual report on the findings of typical cases and member inquiries.

Conclusions:

The Ethics Steering Committee was charged by Council, in part, to develop a process to deal with complaints alleging breaches of the Code of Conduct by members of Council. The ESC recommended the establishment of an Integrity Commissioner model for the City. Under that model, it was explained that draft special legislation (a "Draft Act") must be prepared to cover technical matters such as a right of access to records, and non-compellability of the Commissioner in civil proceedings and process matters. The most significant provisions of the Draft Act would have been the power to impose penalties for found breaches and operating with exemptions from the *Municipal Freedom and Protection of Privacy Act*, that would, for example, permit the Commissioner's report on an inquiry to be made public and the penalty of public censure to be imposed.

The Administration Committee at its meeting of October 8, 2002, did not support the establishment of the Integrity Commissioner model due largely to its estimated cost of \$200,000.00 per year. It was instead requested that the process originally suggested as an interim complaint procedure by the ESC be re-constituted as a stand-alone method of dealing with Code of Conduct complaints.

Accordingly, the ESC is recommending a Complaint Protocol that provides for such matters as how to file and submit a complaint, facts required for inclusion, the role of ESC in classifying complaints to ensure municipal jurisdiction, and (limited) payment of certain legal costs. External legal counsel will be retained and such counsel will have the authority to engage in settlements and to recommend actions that may have a penalty impact.

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List of Attachments:

Appendix 1: Complaint Protocol for the Council Code of Conduct.

Appendix 1

Complaint Protocol for the Council Code of Conduct

Part A: The Informal Complaint Procedure.

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

- (1) advise the member of Council that the behaviour or activity contravenes the Code of Conduct;
- (2) encourage the member of Council to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (4) tell someone else (for example, a senior staff member or an officer of the organization) about your concerns, your comments to the member of Council and the response of the member of Council;
- (5) if applicable, confirm to the member of Council your satisfaction with the response of the member of Council; or, if applicable, advise the member of Council of your dissatisfaction with the response; and
- (6) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with an applicable judicial or quasi-judicial process.

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

Part B: The Formal Complaint Procedure

Requests for Inquiries s.1

Review request 1.(1) A member or non-member of Council, who has reasonable and probable grounds to believe that a member of Council has contravened the Code of Conduct for Members of Council (the “Code of Conduct”), may request that the matter (the “complaint”) be reviewed.

Complaint (2) The request shall be in writing and shall set out the grounds for the belief and the contravention alleged.

(3) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization.)

(4) A complaint shall set out the grounds for the belief and the contravention alleged and include a supporting affidavit that sets out the evidence in support of the complaint.

For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information respecting the complainant during normal business hours.

(5) Staff of the City Clerk’s division, who are commissioners for taking affidavits, are authorized to take the supporting affidavit.

Initial Classification by
Ethics Steering Committee S. 2

File with Clerk 2.(1) The request shall be filed with the City Clerk who shall forward the matter to the Ethics Steering Committee (the “ESC”) for initial classification, in consultation with the City Solicitor, to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies as described in subsection (3).

Requests for Inquiries s.1

Deferral

(2) If the complaint does not include a supporting affidavit, the Committee may defer the classification until an affidavit is received.

(3) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, ESC shall instruct the City Clerk to advise the complainant in writing as follows:

- (a) if the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the City of Toronto Police Service;
 - (b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
 - (c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Director of the Corporate Access and Privacy Office for review;
 - (d) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
 - (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of ESC to process, with any additional reasons and referrals as ESC considers appropriate.
- (4) If the complaint, including any supporting affidavit, is with respect to the Code of Conduct it will be forwarded to a qualified external consultant for investigation.

Requests for Inquiries s.1

External Consultant Investigation ss. 3-8

External consultant	3. The City Solicitor shall retain one or more qualified external consultants to provide external consultant services under this process, in accordance with the City's approved purchasing policies.
Investigation	4. (1) The external consultant shall investigate and may attempt to settle the complaint. (2) Upon receipt of a complaint and supporting affidavit, the external consultant will proceed as follows: (a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation be filed within ten days; and (b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days. (3) If necessary after reviewing the written materials, the external consultant may speak to anyone relevant to the complaint, examine any other documents relevant to the complaint and may enter any City work location relevant to the complaint for the purposes of investigation and settlement. (4) The external consultant may make interim reports to the ESC as required to address any instances of interference, obstruction or retaliation encountered during the investigation.
Final report	(5) The external consultant shall submit a final report on the complaint to the ESC, no later than 90 days after the making of the complaint, outlining the findings, the terms of any settlement, or recommended corrective action.
Lawful recommendations	(6) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.
Refusal to conduct inquiry	5. If the external consultant is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the external consultant shall not conduct an inquiry and shall state the reasons for not doing so in the report.

Requests for Inquiries s.1

- Member not 6. If the external consultant determines that there has been no
blameworthy contravention of the Code of Conduct or that a contravention occurred
although the member took all reasonable measures to prevent it, or that a
contravention occurred that was trivial or committed through inadvertence
or an error of judgement made in good faith, the external consultant shall so
state in the report and shall recommend that no penalty be imposed.
- Copies 7. The City Clerk shall give a copy of the report to the complainant and the
member whose conduct is concerned.
- File with Council 8. The ESC shall forward without comment, endorsement, or editing, the
report to the next meeting of Council.
- Duty of Council 9. Council shall consider and respond to the report within 90 days after the
day the report is laid before it.
- Payment of costs 10.(1) A complainant and a member of Council who are parties to a
complaint under this procedure shall each be reimbursed for actual and
reasonable legal and related expenses up to \$5,000.00.
- (2) Council, on the recommendation of the ESC, may consider the
reimbursement of costs above the limit in subsection 10(1) on a case by
case basis.
- (3) Costs shall only be reimbursed under this section to the complainant, if
the external consultant concludes that the complaint is not frivolous,
vexatious or made in bad faith.
- (4) Costs shall only be reimbursed under this section to the member of
Council, if the external consultant concludes that that there has been no
contravention of the Code of Conduct by the member of Council.

(Communication dated October 8, 2002, addressed to the
Ethics Steering Committee, entitled "Establishment of a Future
City Integrity Commissioner and an Immediate Interim Complaint
Procedure Respecting the Code of Conduct for Council Members".)

The Administration Committee on October 8, 2002:

- (I) amended Recommendation No. (8) embodied in the communication
(June 20, 2002) from the City Clerk, Ethics Steering Committee to read as follows:

- “(8) the cost of processing any complaints under the proposed Interim Complaints Procedure during the year 2002, be absorbed by the Council Budget since funds have been confirmed as available for this purpose;” and
- (II) referred the aforementioned communication, as amended, back to the Ethics Steering Committee with a request that the Ethics Steering Committee:
- (1) develop the Interim Complaint Procedure as a stand-alone process in the absence of a City Integrity Commissioner function; and
 - (2) reconsider the recommendations within the context of having the Interim Complaint Procedure established as a stand-alone process.

Background:

The Administration Committee at its meeting held on October 8, 2002, had before it a communication (August 8, 2002) from the City Clerk, advising that City Council at its meeting held on July 30, 31 and August 1, 2002, had before it Clause No. 37 of Report No. 10 of The Administration Committee, headed “Other Items Considered by the Committee”; that Council directed that the aforementioned Clause be received for information, subject to striking out and referring Item (q), entitled “Establishment of a Future City Integrity Commissioner and an Immediate Interim Complaint Procedure Respecting the Code of Conduct for Council Members”, embodied therein, back to the Administration Committee for further consideration.

Councillor Joe Mihevc, Chair, Ethics Steering Committee, gave a presentation to the Administration Committee with respect to the foregoing matter and filed a copy of his presentation material

(Communication {August 8, 2002} addressed to the
Administration Committee from the City Clerk)

(City Council at its meeting held on July 30, 31 and August 1, 2002, had before it Clause No. 37 of Report No. 10 of The Administration Committee, headed “Other Items Considered by the Committee”).)

Council directed that the aforementioned Clause be received for information, subject to striking out and referring Item (q), entitled “Establishment of a Future City Integrity Commissioner and an Immediate Interim Complaint Procedure Respecting the Code of Conduct for Council Members”, embodied therein, back to the Administration Committee for further consideration.

- (q) Establishment of a Future City Integrity Commissioner
and an Immediate Interim Complaint Procedure Respecting
the Code of Conduct for Council Members.

The Administration Committee reports having referred the following communication back to the Ethics Steering Committee with a request that the Ethics Steering Committee:

- (1) develop the Interim Complaint Procedure as a stand-alone process in the absence of a City Integrity Commissioner function; and
- (2) reconsider the recommendations within the context of having the Interim Complaint Procedure established as a stand-alone process:

(June 20, 2002) from the City Clerk, Ethics Steering Committee, advising that the Ethics Steering Committee on June 20, 2002, recommended to the Administration Committee that:

- (1) consistent with its Terms of Reference, the Ethics Steering Committee be charged with the responsibility of recommending to Council, the protocols, by-laws and policies governing the ethical behaviour of members of Council;
- (2) consistent with its Terms of Reference, neither the Ethics Steering Committee nor any other Council body or individual (including a City employee) shall have a role in the investigation or adjudication of the ethical behaviour of another member of Council, with the one exception noted in Recommendation No. (6);
- (3) an Integrity Commissioner function similar to the Provincial model and having an appointment term that does not exceed five years, be established by the City of Toronto to advise Council members on Code of Conduct inquiries, assess the nature and legitimacy of formal Code of Conduct complaints, determine whether investigation is warranted, and ensure that appropriate actions are taken in this regard for report and recommendation to Council;
- (4) qualifications for the City Integrity Commissioner include, at a minimum, membership in the Law Society of Upper Canada, municipal or other administrative law experience, municipal law adjudication experience, and impartiality such as that perceived with a retired judge;
- (5) Council grant authority for application to be made for special legislation from the Province to establish a City Integrity Commissioner similar to the Provincial model and that the City Solicitor and Chief Administrative Officer develop the required Draft Act;
- (6) the Integrity Commissioner operate in an arm's length capacity from Council and the Mayor's office except that, following the Provincial model, Council will make the final decision on whether any penalty (as may be recommended by the Integrity Commissioner) is imposed on the member found to have contravened the Bill Code;
- (7) while awaiting special legislation from the Province, the Interim Complaint Procedure presented in Appendix 2 be approved for implementation including its provisions for an informal complaint process, or a formal process using the services of external legal counsel, fixed penalty provisions, specified reporting procedures and timeframes, conditions respecting payment of legal costs, and a role for Ethics Steering Committee to convey the report to Council and advise on the extent of public disclosure;

- (8) the cost of processing any complaints under the proposed Interim Complaints Procedure during the year 2002, be absorbed by the Clerk's Division since funds have been confirmed as available for this purpose;
- (9) the Ethics Steering Committee report to the Administration Committee in the fall of 2002 on a recommended Advice Protocol for processing requests for advice to an Integrity Commissioner under the Draft Act;
- (10) the Ethics Steering Committee report to the Administration Committee in the fall of 2002 on a recommended Complaint Protocol for processing investigation requests to an Integrity Commissioner under the Draft Act;
- (11) Council determine the source of a budget to cover the establishment of an Integrity Commissioner function, as well as what monetary or other limitations should apply, only after special legislation has been enacted; and
- (12) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

(Communication (June 20, 2002) addressed to the
Administration Committee, entitled "Establishment of a Future
City Integrity Commissioner and an Immediate Interim Complaint
Procedure Respecting the Code of Conduct for Council Members" from
the Ethics Steering Committee.)

It is recommended that:

- (1) consistent with its Terms of Reference, the Ethics Steering Committee be charged with the responsibility of recommending to Council, the protocols, by-laws and policies governing the ethical behaviour of members of Council;
- (2) consistent with its Terms of Reference, neither the Ethics Steering Committee nor any other Council body or individual (including a City employee) shall have a role in the investigation or adjudication of the ethical behaviour of another member of Council, with the one exception noted in Recommendation No. (6);
- (3) an Integrity Commissioner function similar to the Provincial model and having an appointment term that does not exceed five years, be established by the City of Toronto to advise Council members on Code of Conduct inquiries, assess the nature and legitimacy of formal Code of Conduct complaints, determine whether investigation is warranted, and ensure that appropriate actions are taken in this regard for report and recommendation to Council;
- (4) qualifications for the City Integrity Commissioner include, at a minimum, membership in the Law Society of Upper Canada, municipal or other administrative law experience, municipal law adjudication experience, and impartiality such as that perceived with a retired judge;

- (5) Council grant authority for application to be made for special legislation from the Province to establish a City Integrity Commissioner similar to the Provincial model and that the City Solicitor and Chief Administrative Officer develop the required Draft Act;
- (6) the Integrity Commissioner operate in an arm's length capacity from Council and the Mayor's office except that, following the Provincial model, Council will make the final decision on whether any penalty (as may be recommended by the Integrity Commissioner) is imposed on the member found to have contravened the Bill Code;
- (7) while awaiting special legislation from the Province, the Interim Complaint Procedure presented in Appendix 2 be approved for implementation including its provisions for an informal complaint process, or a formal process using the services of external legal counsel, fixed penalty provisions, specified reporting procedures and timeframes, conditions respecting payment of legal costs, and a role for Ethics Steering Committee to convey the report to Council and advise on the extent of public disclosure;
- (8) the cost of processing any complaints under the proposed Interim Complaints Procedure during the year 2002, be absorbed by the Clerk's Division since funds have been confirmed as available for this purpose;
- (9) the Ethics Steering Committee report to the Administration Committee in the fall of 2002 on a recommended Advice Protocol for processing requests for advice to an Integrity Commissioner under the Draft Act;
- (10) the Ethics Steering Committee report to the Administration Committee in the fall of 2002 on a recommended Complaint Protocol for processing investigation requests to an Integrity Commissioner under the Draft Act;
- (11) Council determine the source of a budget to cover the establishment of an Integrity Commissioner function, as well as what monetary or other limitations should apply, only after special legislation has been enacted; and
- (12) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

At its meeting on June 20, 2002, the Ethics Steering Committee gave consideration to the attached draft report (June 17, 2002) from the Chair, Ethics Steering Committee addressed to the Administration Committee providing draft recommendations to the Ethics Steering Committee, regarding the establishment of an Integrity Commissioner function respecting the application of the Code of Conduct for Members of Council ("Code of Conduct"), advising that an Integrity Commissioner would provide Code of Conduct related advice and investigate Code of Conduct complaints and reporting on steps to establish an Integrity Commissioner function later in 2002 and an Interim Complaint Procedure to deal with complaints in the short-term.

(Communication (June 17, 2002) addressed to the
Administration Committee, entitled "Establishment of a Future
City Integrity Commissioner and an Immediate Interim Complaint
Procedure Respecting the Code of Conduct for Council Members"
from the Ethics Steering Committee.)

Purpose:

This report recommends the establishment of a Integrity Commissioner function respecting the application of the Code of Conduct for Members of Council ("Code of Conduct"). The Integrity Commissioner will provide Code of Conduct related advice and will investigate Code of Conduct complaints. Steps to establish an Integrity Commissioner function later in 2002 are presented as is an Interim Complaint Procedure to deal with complaints in the short-term.

Financial Implications and Impact Statement:

There will be a cost, not expected to exceed \$6,000.00, to file and process an application for special legislation to establish a City Integrity Commissioner. The cost includes a filing fee, publishing four notices of application, and printing for the private bill and the Act. The City Clerk's division has confirmed it can absorb this cost within its approved Council budget.

If the City establishes an Interim Complaint Procedure, external legal consultants will be retained for any Code of Conduct complaint investigations prior to receipt of special legislation and the establishment of an Integrity Commissioner. The City Clerk's division has confirmed it can absorb the associated costs within its approved Council budget for 2002.

A future report will identify funding sources for a part-time City Integrity Commissioner if Council approves the function. It is estimated that the cost will be in the range of \$200,000.00 assuming an advisory role and a complaint inquiry role limited to the Code of Conduct.

Recommendations:

It is recommended that:

- (1) consistent with its Terms of Reference, the Ethics Steering Committee be charged with the responsibility of recommending to Council, the protocols, by-laws and policies governing the ethical behaviour of members of Council;
- (2) consistent with its Terms of Reference, neither the Ethics Steering Committee nor any other Council body or individual (including a City employee) shall have a role in the investigation or adjudication of the ethical behaviour of another member of Council, with the one exception noted in Recommendation No. (6);
- (3) an Integrity Commissioner function similar to the Provincial model and having an appointment term that does not exceed five years, be established by the City of Toronto to advise Council members on Code of Conduct inquiries, assess the nature and legitimacy of formal Code of Conduct complaints, determine whether investigation is warranted, and ensure that appropriate actions are taken in this regard for report and recommendation to Council;

- (4) qualifications for the City Integrity Commissioner include, at a minimum, membership in the Law Society of Upper Canada, municipal or other administrative law experience, municipal law adjudication experience, and impartiality such as that perceived with a retired judge;
- (5) Council grant authority for application to be made for special legislation from the Province to establish a City Integrity Commissioner similar to the Provincial model and that the City Solicitor and Chief Administrative Officer develop the required Draft Act;
- (6) the Integrity Commissioner operate in an arm's length capacity from Council and the Mayor's office except that, following the Provincial model, Council will make the final decision on whether any penalty (as may be recommended by the Integrity Commissioner) is imposed on the member found to have contravened the Bill Code;
- (7) while awaiting special legislation from the Province, the Interim Complaint Procedure presented in Appendix 2 be approved for implementation including its provisions for an informal complaint process, or a formal process using the services of external legal counsel, fixed penalty provisions, specified reporting procedures and timeframes, conditions respecting payment of legal costs, and a role for Ethics Steering Committee to convey the report to Council and advise on the extent of public disclosure;
- (8) the cost of processing any complaints under the proposed Interim Complaints Procedure during the year 2002, be absorbed by the Clerk's Division since funds have been confirmed as available for this purpose;
- (9) the Ethics Steering Committee report to the Administration Committee in the fall of 2002 on a recommended Advice Protocol for processing requests for advice to an Integrity Commissioner under the Draft Act;
- (10) the Ethics Steering Committee report to the Administration Committee in the fall of 2002 on a recommended Complaint Protocol for processing investigation requests to an Integrity Commissioner under the Draft Act;
- (11) Council determine the source of a budget to cover the establishment of an Integrity Commissioner function, as well as what monetary or other limitations should apply, only after special legislation has been enacted; and
- (12) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

On September 28 and 29, 1999, Council approved a Code of Conduct for Members of Council - Inclusive of Lobbyist Provisions. In summary, this provided:

- (i) a Code of Conduct consistent with, and supplementary to, legislative requirements that include specific standards of conduct pertinent to members' official duties;

- (ii) expectations for dealing with lobbyists;
- (iii) inclusion of ethical matters and provisions in the purchasing procedure report; and
- (iv) creation of an Ethics Steering Committee to recommend a process for monitoring the implementation of the Code of Conduct and considering additional related policy matters.

At its meeting of October 3, 4, and 5 and 10, 11 and 12, 2000, Council approved Terms of Reference for the Ethics Steering Committee. Since that time, the Ethics Steering Committee (ESC) has been meeting to consider methods of handling complaints respecting alleged Council member contravention of the approved Code of Conduct, as well as related policy issues. To this end, as authorized by its Terms of Reference, ESC has also been considering the merits of establishing an “Ethics” Commissioner function.

Staff reports to the ESC in this regard, are available from the City Clerk’s Division. One report for information from the CAO to the October 9, 2001 meeting of ESC is titled “Ethics Commissions: Roles, Incidence and Pertinence to the City of Toronto”. Another information report from the CAO and City Solicitor to the May 16, 2002 meeting of ESC, is titled “Proposal to Appoint a City of Toronto Integrity Commissioner”.

I. Summary of ESC Role and Process:

Council approved the following principles for the ESC in its development of a Protocol for formal complaint investigation:

- (i) consistent and fair consideration and response to both complainants and members;
- (ii) objective and reasonable steps to determine if a complaint merits investigation; and
- (iii) avoidance of any conflict of interest by the Mayor, the ESC, other members of Council and staff of the City by ensuring they shall not have any involvement in the actual investigation of an alleged complaint.

In addition, Council approved that the ESC functions shall include review and recommendations for amendments or additions of policies to the Code of Conduct covering member requirements, inclusive of recommending penalty provisions for approval by Council.

It is, therefore, recommended that consistent with its Terms of Reference, the ESC be charged with the responsibility of recommending to Council, the protocols, by-laws and policies governing the ethical behaviour of members of Council.

It is also recommended that, consistent with its Terms of Reference, neither the Ethics Steering Committee nor any other Council body or individual (including a City employee) shall have a role in the investigation or adjudication of the ethical behaviour of another member of Council, with one exception (i.e., that Council shall make the final decision on whether any penalty, as may be recommended by the Integrity Commissioner, is imposed on the member found to have contravened the Bill Code).

Appendix 1 contains more detailed information on the mandate of the ESC, the approved Code of Conduct for Council Members, findings on the ethics policies, models of enforcement and the role of “Integrity/Ethics Commissioners” across other jurisdictions and, the evaluation of options and their applicability to the City of Toronto.

II. Summary of Findings on the Role of an Integrity Commissioner:

It was found that an “Integrity Commission” usually provides educational, advisory, and enforcement functions including complaint investigation. While not as common, and primarily in certain U.S. jurisdictions, some Commissions are also responsible for policy development and research, establishing penalties, and administration.

The education function typically entails the dissemination of information concerning the laws about conflict of interest and misconduct to members of Council and the public.

Two advisory functions are typical, namely, advising Council members concerning their own situation, and advising Council or the public with respect to policy concerning conflict of interest and misconduct and other ethical policies.

Enforcement activities of an Integrity Commission generally include obtaining financial disclosure statements, investigating complaints, and making recommendations on actions to be taken in the event of contravention of a legislative requirement.

III. Summary of Options Considered by the ESC:

The ESC has been charged with developing a Protocol (for a third party) to investigate complaints respecting alleged contravention by a Council member of the Code of Conduct. The options considered by ESC were to:

- (1) Explore whether the Provincial Integrity Commissioner could also act in the capacity of Integrity Commissioner for the City of Toronto;
- (2) Request the Province of Ontario to establish a Municipal Integrity Commissioner;
- (3) Request the Association of Municipalities of Ontario to consider establishing a Municipal Integrity Commissioner;
- (4) Maintain responsibility at the City of Toronto with the ESC recommending to Council whether an external investigation should occur; and
- (5) Request the Province to permit the City to establish its own Integrity Commissioner.

IV. Summary of Findings and Rationale for Recommendations:

It was found that a continuum exists respecting the types of potential complaints that may be received alleging misconduct on the part of a Council member. Specifically, a complaint tabled as a Code of Conduct complaint could actually be, for example, a matter within the purview of the Criminal Code that should be referred to the Police, or a matter

charging serious misconduct (supposed malfeasance, breach of trust or other misconduct) covered under the *Municipal Act*, or a matter within the purview of the (Provincial) *Municipal Conflict of Interest Act*.

For the reasons described in Appendix 1, part 4. (b), Evaluation of Options, and, given the complexity of the various legislation that regulates the conduct of Council members, ESC has determined that the establishment of a Code of Conduct advisory function for Council members would be valuable, as would the availability of consistency for complaint investigation respecting the Code of Conduct. Accordingly, the ESC has selected the fifth option for the City of Toronto, namely, the establishment of an Integrity Commissioner.

It was also concluded that only a party who has no other dealings or employment with the City, involvement in political campaigning, or any financial interest in work of the City, should undertake actual complaint investigation. This was based on advice from the Honourable Coulter A. A. Osborne (Ontario Integrity Commissioner) and the City Solicitor, and findings from other jurisdictions on the need to ensure an arms-length, independent and external undertaking.

It is, therefore, recommended that an Integrity Commissioner function similar to the Provincial model and having an appointment term that does not exceed five years, be established by the City of Toronto to advise Council members on Code of Conduct inquiries, assess the nature and legitimacy of formal Code of Conduct complaints, determine whether further investigation is warranted, and ensure that appropriate actions are taken in this regard for report and recommendation to Council.

It is also recommended that qualifications for the City Integrity Commissioner include, at a minimum, membership in the Law Society of Upper Canada, municipal or other administrative law experience, municipal law adjudication experience, and impartiality such as that perceived with a retired judge. It is further recommended that the Integrity Commissioner for the City of Toronto operate in an arm's length capacity from Council and the Mayor's office.

V. Immediate Steps Required to Implement ESC Recommendations:

(a) Request for Special Legislation to Establish an Integrity Commissioner:

In Ontario, special or general legislation applicable to the City of Toronto is required for it to establish a municipal Integrity Commissioner with powers similar to that of the Province. Council authority must be obtained to authorize an application for special legislation. In addition, Draft special legislation (the "Draft Act") must also be prepared in order to establish the office of an Integrity Commissioner at the City.

The Draft Act must include, for example, provisions dealing with confidential information, immunity, and the non-compellability of the Integrity Commissioner and his or her staff in civil proceedings. The Draft Act should also provide that

Council may by by-law, adopt all or part of a City policy or by-law respecting the conduct of members of Council as a 'code of conduct'. The range of activities covered as a code of conduct in a Draft Act is referred to in this report as the "Bill Code". The Draft Act should also provide that the Integrity Commissioner would perform such other duties as required by Council with respect to ethical matters or practices and procedures that, in Council's opinion, are related to or may have an impact on the Bill Code.

In particular, for the reason noted below in part V (b) (i), the Draft Act should include provisions permitting the release of information (for example all or part of the Integrity Commissioner's report) and the non-release of other information (for example, requests for advice) despite the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"). As discussed below, the Draft Act should also provide that the Integrity Commissioner may recommend that no penalty be imposed, that the member be reprimanded, or that the member's right to sit and vote in Council be suspended for a specified period or until a condition imposed by the Commissioner is fulfilled. Unlike the Provincial model, the Draft Act should not include that a member could lose his or her seat for contravention of the Bill Code. The reason for this approach is that Provincial Acts governing municipalities already provide this penalty, and others, for improper conduct.

The Draft Act should provide that it is Council that makes the final decision on whether any penalty (as may be recommended by the Integrity Commissioner) is imposed on the member found to have contravened the Bill Code. This approach follows the Provincial model because the Bill Code, like the Provincial Act (in terms of its conduct provisions) is not a precise document.

It is, therefore, recommended that Council grant authority for an application to be made for special legislation from the Province to establish a City Integrity Commissioner similar to the Provincial model and the City Solicitor and Chief Administrative Officer develop the required Draft Act.

- (b) Establishment of an Interim Complaint Procedure (prior to an Integrity Commissioner) and Limitations on Information Disclosure and the Imposition of Penalties:

The ESC is recommending adoption of an Interim Complaint Procedure for dealing with Code of Conduct complaints while the City awaits Provincial response to the request for special legislation. The Interim Complaint Procedure attached as Appendix 2 to this report consists of both an informal and formal complaint process, based in part on the model used in London, Ontario. Although London's by-law was enacted in October of 1997, no complaint has ever been made under the formal process.

The formal Interim Complaint Process requires complaints to be in writing and specifies the types of relevant facts for inclusion. The role of the ESC in classifying complaints to ensure the City has jurisdiction in the matter, as well as the action required of ESC in this regard, is also specified.

As a result of legal limitations (see part (i) below), the formal Interim Complaints Procedure does not provide for fixed penalties. The report from an external legal counsel, however, could still include recommendations that have a penalty impact. It could, for example, require reimbursement of the City for materials used for a non City-business purpose. For this reason, an external counsel investigating the complaint has been given a role in attempting to settle the complaint under section 4 of Appendix 2. This role goes beyond a simple determination (section 6) that a member is not blameworthy.

The recommended Interim Complaint Procedure has submission and reporting timeframe conditions specified similar to those of the Provincial model. These will also be reflected in the Draft Act and in a formal Complaint Protocol for implementation in conjunction with the establishment of an Integrity Commissioner.

Payment of legal costs of the complainant and respondent up to \$5,000.00 is also provided for in the Interim Complaint Procedure, but only if, for the complainant, the external consultant concludes that the complaint is not frivolous, vexatious or made in bad faith and only if, for the member of Council, the external consultant concludes that there has been no contravention by that member. Council has the authority to increase the amount based on the facts of the case and subject to the preceding conditions having been concluded in the report of the external consultant.

The report of the external consultant shall be filed with the ESC to ensure proper and timely reporting to Council, without comment, endorsement or editing by the ESC. In order to ensure, to the degree possible within the parameters of the *Municipal Freedom of Information and Protection of Privacy Act*, that a breach of the Code of Conduct is made public by the Council, the ESC may recommend on this aspect of disclosure to the Council when conveying the report of the external consultant.

It is, therefore, recommended that while awaiting special legislation from the Province, the Interim Complaint Procedure presented in Appendix 2 be approved including its provisions for an informal complaint process, or a formal process using the services of external legal counsel, a settlement role for the external consultant, specified reporting procedures and timeframes, conditions respecting payment of legal costs, and a role for ESC to convey the report to Council and advise on the extent of public disclosure.

(i) Limitations on Information Disclosure and the Imposition of Penalties:

The formal Interim Complaint Procedure could also be used, with some fine-tuning, as a stand-alone process in the absence of a City Integrity Commissioner function. However, without special legislation allowing for exceptions, MFIPPA limits the type of information about a request for an inquiry and the resulting report that could be filed as part of the public agenda. For example, the Director of Corporate Access and Privacy has advised that a complaint about any person is the personal information of the individual against whom the complaint is directed and the complainant. As a result of this, both parties would have to consent to the public disclosure of the complaint, if the complainant, like the member, is identified or identifiable.

The absence of special legislation also limits the types of penalties that can be imposed. For example, the *Municipal Act* does not contain specific provisions similar to the (Provincial) *Member's Integrity Act* that permit a reprimand or exclusion from Council meetings except in subsection 55(4), which permits the presiding officer to expel any person for improper conduct at a meeting. MFIPPA also has the effect of limiting Council's ability to censure activities subject to complaint, unless it is clear the member of Council concerned cannot be identified.

(c) Estimated Cost of Establishing the Interim Complaint Procedure:

The estimated cost per complaint investigation under the Interim Complaint Procedure using external legal counsel, is approximately \$8,000.00 for fees and disbursements. This cost estimate has been based on the average hourly rate of \$400.00 for legal consultants and assumes 15-20 hours on average for reviewing the filed materials, conducting any other necessary investigations and interviews and preparing the report. It is anticipated that less than 4 complaints per year of this nature would proceed to a full investigation requiring settlement and the associated greater costs based on the time involved.

Discussion indicates that funding is available within the approved Council budget of the Clerk. It is, therefore, recommended that the costs of processing any complaints under the proposed Interim Complaints Procedure during the year 2002 be allocated to the Clerk's Division.

VI. Next Steps to Implement a City of Toronto Integrity Commissioner:

If the Council makes an application for special legislation to establish a City Integrity Commissioner, and if the Province grants this request, then protocols delineating the operations of the function need to be implemented. Accordingly, a draft Protocol for Advice and a draft Protocol for Complaint Investigation have been considered by ESC. When finalized, the Protocols would be adopted by a by-law passed under the Draft Act (the Draft Act would authorize Council to pass by-laws respecting the procedures to be

followed and any limitations Council deems advisable in these matters). ESC have directed staff to fine-tune both the Draft Advice Protocol and Draft Complaint Protocol in anticipation of a future Integrity Commissioner model, as summarized below.

(a) Advice Protocol Under a City Integrity Commissioner:

A Draft Advice Protocol to be implemented under the future Draft Act has been approved in principle by the ESC and is attached as Appendix 3 to this report. In summary, the Draft limits the advice to be provided to members of Council by an Integrity Commissioner to compliance with the Bill Code (i.e., the future Council by-law delineating what policies are considered Code of Conduct matters). It also notes that since there is other legislation that may regulate conduct, it is required that a Council member should seek assistance from his or her own legal counsel for specific legal advice on personal matters, or on specific questions of compliance with the *Municipal Conflict of Interest Act*.

The Draft Advice Protocol also provides for some education and outreach to Council members and their staff regarding knowledge of the Draft Act, and procedures of the Integrity Commissioner. This will be supplemented by ESC assisting to familiarize newly elected Council members with City ethics policies.

It is, therefore, recommended that the Ethics Steering Committee report to the Administration Committee in the fall of 2002 on a recommended Advice Protocol for processing requests for advice to an Integrity Commissioner under the Draft Act.

(b) Complaint Protocol Under a City Integrity Commissioner:

Attached as Appendix 4, is the Draft Complaint Protocol approved in principle by the ESC. Complaint procedures are similar to the Provincial model except that, in keeping with the compliance section of the Code of Conduct of the City, complaints by members of the public will be processed to the Integrity Commissioner for review.

A complaint must be assessed to make an initial determination that it falls within the jurisdiction of the Integrity Commissioner (i.e., whether it is really a complaint respecting conflict of interest legislation or a criminal or corruption charge, or if it falls under a separate policy of the City). The ESC, with the advice of the City Solicitor, can identify/classify the likely type of any complaint received in order to initiate the formal Complaint Protocol under the Integrity Commissioner (or, as previously discussed, the Interim Complaint Protocol).

Any complaint forwarded to the Integrity Commissioner should include a supporting affidavit that sets out the evidence in support of the complaint and the Draft Act will set out steps to be followed similar to those at the Province. Of primary importance, is that no other investigation shall be commenced by Council, or its Committees into a matter that has been referred to the

Commissioner (or, under the Interim Complaint Procedure, to an external counsel). Similarly, no investigation by the Integrity Commissioner (or, external counsel) shall be conducted into a matter determined by him or her to be the jurisdiction of the police, or other body.

The Draft Act will also provide that the Integrity Commissioner has rights of access to City records, and it will specify that the Commissioner is not authorized to hold a full public hearing under the *Public Inquiries Act*, unless Council has authorized it.

It is expected that requests will be made for access under MFIPPA to the requests for inquiries and the supporting affidavits. Unlike the Province where only MPPs file requests, there is a concern for the City that public requests for Council Member investigation may contain defamatory materials. The ESC has yet to consider what procedures are necessary to ensure as much public disclosure as possible while providing for the non-release of certain information.

It is, therefore, recommended that the Ethics Steering Committee report to the Administration Committee in the fall of 2002 on a recommended Complaint Protocol for processing investigation requests to an Integrity Commissioner under the Draft Act.

(c) Cost to Establish a City Integrity Commissioner:

In the Province of Ontario, the budget for the Office of the full-time Integrity Commissioner for the fiscal year 2001/2002 is \$441,300.00 of which \$140,000.00 per annum is for the salary of the Commissioner. The Provincial Commissioner also has many responsibilities with respect to financial disclosure requirements under the *Members' Integrity Act, 1994*, not present for the municipality. The budget includes the salaries of two support staff (who also deal with lobbyist registration matters), rent for an off-premises office, and operating a web site.

If the City proceeds with establishing a part-time City of Toronto Integrity Commissioner, it will be necessary to identify a source of funds. It is estimated that the cost will be in the range of up to \$200,000.00 assuming an advisory role and complaint inquiry role limited to the Code of Conduct. It is, therefore, recommended that Council determine the source of a budget to cover the establishment of an Integrity Commissioner function, as well as what monetary or other limitations should apply, only after special legislation has been enacted.

Conclusions:

The Ethics Steering Committee (ESC) is responsible, in part, to recommend to Council a process to handle complaints alleging non-compliance with the Code of Conduct for Council Members. The Code of Conduct provides members with a common basis of acceptable conduct in carrying out their duties. It is consistent with the existing statutes governing the conduct of members (i.e., four pieces of Ontario legislation and one piece of Federal legislation).

The ESC considered a range of options to provide Council members advice and impartial complaint investigation respecting the Code of Conduct. It was found that a continuum exists respecting the types of potential complaints that may be received. A complaint regarding contravention of the Code of Conduct may, in fact, be one pertaining to possible violation of federal criminal law, provincial conflict of interest or other law, or ethics provisions. Given the complexity and continuum of applicable legislation, and following study of the incidence, models and operations of 'Ethics Commissions' in other jurisdictions, the ESC is recommending the establishment of a part-time, impartial Integrity Commissioner function. The need for complaint investigation to be undertaken in an arms-length, independent and external manner was strongly advised by the Ontario Integrity Commissioner and the City Solicitor.

In Section V., Immediate Steps Required to Implement ESC Recommendations, it is explained that draft special legislation (a "Draft Act") must be prepared to cover technical matters such as a right of access to records, and non-compellability of the Commissioner in civil proceedings and process matters. The most significant provisions of the Draft Act will be the power to impose penalties and exemptions from the *Municipal Freedom and Protection of Privacy Act*, that will, for example, permit the Commissioner's report on an inquiry to be made public and the penalty of public censure to be imposed.

While awaiting a response from the Province respecting the City's request for special legislation, Toronto needs to have in place a process to deal with complaints alleging Council member non-compliance with the Code of Conduct. To this end, an Interim Complaint Procedure is recommended for immediate implementation. It provides for such matters as how to file and submit a complaint, facts required for inclusion, the role of ESC in classifying complaints to ensure municipal jurisdiction, and (limited) payment of certain legal costs. External legal counsel will be retained under the Interim Complaint Procedure and will have the authority to engage in settlement and recommend actions that may have a penalty impact.

In the future, if the Province approves special legislation, protocols delineating the operations of the Integrity Commissioner function will need to be implemented. Accordingly, in Section VI., Next Steps to Implement a City of Toronto Integrity Commissioner, the purpose and development to-date of both an Advice Protocol and a Complaint Protocol, are described. These matters will be the subject of further reports to the Administration Committee in the fall of 2002.

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List of Attachments:

- Appendix 1: Code of Conduct for Council Members, Enforcement Models, Role of Integrity Commissioners, and Evaluation of Options.
- Appendix 2: Interim Complaint Procedure.
- Appendix 3: Draft Advice Protocol Under Proposed Draft Act Provisions.
- Appendix 4: Draft Complaint Protocol Under Proposed Draft Act Provisions.

Appendix 1

Code of Conduct for Council Members, Enforcement Models,
Role of Integrity Commissioners, and Evaluation of Options

(1) Code of Conduct for Council Members:

The Code of Conduct provides Council members with a common basis of acceptable conduct. It assists in the day-to-day work of members by presenting practical examples of conduct that are applicable to many situations and groups. It is consistent with the existing statutes governing the conduct of members, specifically, four pieces of Ontario legislation and one piece of Federal legislation, as follow:

- (i) the *Municipal Act*, and Municipal Code Chapter 27, Council Procedures, the Council Procedural By-law passed under section 55 of that Act;
- (ii) the *Municipal Conflict of Interest Act*;
- (iii) the *Municipal Elections Act, 1996*;
- (iv) the *Municipal Freedom of Information and Protection of Privacy Act*; and
- (v) The Federal *Criminal Code*.

The legislated provisions in Ontario for conduct tend to emphasize economic or pecuniary matters such as bribery, voting on a matter in which one has a personal financial interest, or exceeding the allowable maximum election campaign expenditure. Those matters are outside the direct control of the municipality since it can only act within the powers delegated to it by the Province. In turn, the Province is limited as to

what it can delegate to a municipality, so that, for example, the Province may not give, nor may a municipality take, power over (federal) criminal matters. Nor may a Council pass by-laws that conflict with provincial legislation.

Under Ontario legislation, a Council may still, however, establish principles and standards of behaviour to govern the conduct of its members if those matters are not covered by an Act, such as non-financial (i.e., non-pecuniary) interests, or conduct simply not addressed. This could include, for example:

- (i) development of a draft by-law on the disclosure of confidential information;
- (ii) considering the establishment of financial and assets disclosure requirements;
- (iii) identification of penalties for the Code of Conduct other than financial; and
- (iv) identification of offences under the Code of Conduct appropriate to be subject to a potential fine under the *Provincial Offences Act*.

(a) Role of the Ethics Steering Committee:

The ESC is a Special Committee of Council with a dual reporting relationship. It reports to Council via the Administration Committee on policy and related matters, but, as per the Interim Complaint Procedure in Appendix 2, shall send directly to Council any report made by an external investigator of a complaint respecting the Code of Conduct for Council Members.

Council approved the following principles for the ESC in its development of a Protocol for formal complaint investigation:

- (i) consistent and fair consideration and response to both complainants and members;
- (ii) objective and reasonable steps to determine whether a complaint merits investigation; and
- (iii) avoidance of any conflict of interest by the Mayor, the ESC, other members of Council and staff of the City by ensuring they shall not have any involvement in the actual investigation of an alleged complaint.

In addition, Council approved that the ESC functions shall include review and recommendations for amendments or additions of policies to the Code of Conduct covering member requirements, inclusive of recommending penalty provisions for approval by Council.

(2) ESC Process to Develop a Complaints Investigation Protocol:

The ESC reviewed extensive information on models and operations of complaint procedures and organizations, such as 'Ethics Commissions', in municipal, provincial and federal Canadian and other jurisdictions. The models from other jurisdictions have implications not only for dealing with complaints regarding non-compliance with Toronto's Code of Conduct, but can also apply to non-compliance with other Ontario legislation. The review covered the following jurisdictions:

- (i) The Government of Canada;
- (ii) The Province of Ontario;
- (iii) Other Canadian Provinces, including Nova Scotia, British Columbia and Alberta;
- (iv) Several U.S. states, including New York, Vermont, New Jersey and California;
- (v) Several Districts in Australia and New Zealand;
- (vi) Former Metropolitan Toronto municipalities;
- (vii) Large urban U.S. municipalities, including New York City, Chicago and Los Angeles;
- (viii) Large and medium Canadian urban municipalities; and
- (ix) Literature reviews, reports and legal materials.

(a) Overview of Findings:

The findings show that while most of the over 50 jurisdictions studied and assessed have codes of conduct/legislation and ordinances in place for the government employees, only 28 have codes of conduct/conflict of interest legislation that apply to elected municipal council members, or (federal/provincial/state) legislative assembly members. The Codes themselves vary and may or may not include conflict of interest, financial disclosure, and a range of related expected ethical behaviours and conduct.

Of the approximately 21 municipalities and cities reviewed, only nine have codes of conduct/ordinances that apply specifically to elected officials and municipal council members. Three of these (U.S.) cities have established an Ethics Commission/Board or similar body composed of citizens without investigative powers that concentrate on matters of financial disclosure. Another uses an external investigator for conduct complaints based on advice from the Board of Control, and one has a Code of Conduct containing provisions only for the acceptance of gifts and the use of municipal property, for example.

The existence of an “Ethics Commissioner”, “Board of Ethics”, or similar entity, is most common at the federal, provincial and state level jurisdictions (about 29 reviewed). Of these, 16 have established some sort of Ethics or Conflict of Interest Commission or Committee to oversee various types of Codes for elected officials and politicians. The mandate of many Commissions/Committees is to obtain, monitor and publish financial disclosure statements as required in those jurisdictions and to consider conflict of interest for financial matters. Only some also considered broader matters of ethics such as gifts/benefits, or use of property and staff, similar to provisions in Toronto’s Code of Conduct for Council Members.

(b) Findings on the Role of an Integrity Commissioner:

It was found that an “Integrity Commission” usually provides educational, advisory, and enforcement functions including complaint investigation. While not as common, and primarily in certain U.S. jurisdictions, some Commissions are also responsible for policy development and research, establishing penalties, and administration.

Integrity Commissions acquire considerable experience in conflict of interest and other ethics matters. They provide a separate, non-criminal forum for dealing with ethical issues and, when not directly accountable to those whose actions they must consider, are impartial and objective appraisers.

The education function typically entails the dissemination of information concerning the laws about conflict of interest and misconduct to members of Council and the public. This may include the distribution of information on registered lobbyists in jurisdictions with the authority to enact and enforce such legislation.

Two advisory functions are typical and may be distinguished as follows:

- (i) advising Council members concerning their own situation; and
- (ii) advising Council or the public with respect to policy concerning conflict of interest and misconduct and other ethical policies.

Enforcement activities of an Integrity Commission generally include obtaining financial disclosure statements if required, investigating complaints, and making recommendations as to what should be done in the event that a member has contravened a Code of Conduct or legislative requirement.

(c) Applicability of Findings to the City of Toronto:

The review found that the legislation governing conflict of interest rules for municipal governments in Ontario, is more detailed and restrictive than that governing Canadian federal and other provincial elected members, as well as many other jurisdictions. The Acts and regulations governing municipal Councillors in Ontario can be divided into two categories: “General” conduct and “Specific Types of Prohibited Conduct” as follows:

- (1) “General” conduct contained in legislation includes the general standard of conduct of members of Council, and declaration of conflict of interest; and
- (2) “Specific Types of Prohibited Conduct” contained in legislation includes:
 - (i) breach of (public) trust and fraud;
 - (ii) “influence peddling” including undue influence upon Council, and the offering and acceptance of extra benefits and gifts;
 - (iii) secret commissions;
 - (iv) misuse of information including the use of insider information for personal benefit, the disclosure of confidential information, and of personal information, and other contravention of the *Municipal Freedom of Information and Protection of Privacy Act*;

- (v) City property or funds including false return on public funds,
- (vi) refusal to deliver municipal property, and voting illegally on financial matters;
- (vii) eligibility or requirements of office including non-compliance with the requirements of office or absence from meetings, holding incompatible offices or employment, loss of citizenship or residency, conduct unbecoming, and defamatory statements; and
- (viii) municipal elections including interfering with ballots, furnishing false information to election officers, procuring votes, bribery or another “corrupt” practice, and non-compliance with financial or other matters.

The above provisions plus the City’s Code of Conduct, Harassment and Hate Action Policy Framework, the Conflict of Interest Standards in relation to administration of the Provincial Offences Courts, and other City policies all apply to Council members.

(3) Options Considered by the ESC:

As approved to-date, the process at the City respecting formal complaints relating to the Code of Conduct is that any alleged formal complaint is to be submitted in writing to the Mayor. It is the responsibility of the Mayor to submit it to the ESC for determination as to whether an investigation appears warranted. In turn, the ESC has been charged with developing a Protocol for Council approval to be able to make this determination (as opposed to actual investigation).

Several options available to the City were considered by the ESC as its recommended Protocol to determine whether investigation of a formal conflict of interest/conduct complaint appears warranted. The options considered were as follows:

- (1) exploring with the Provincial Integrity Commissioner, the possibility of that Office also acting in the capacity of Integrity Commissioner for the City of Toronto;
- (2) requesting the Province of Ontario to establish a (province-wide) Municipal Integrity Commissioner and to amend the *Municipal Conflict of Interest Act* accordingly;
- (3) requesting the Association of Municipalities of Ontario to consider the establishment of a Municipal Integrity Commissioner funded by the member municipalities;
- (4) maintaining responsibility at the City of Toronto where the ESC recommends to Council whether an external investigation should occur; and

- (5) requesting the Province to permit the City to establish its own Integrity Commissioner function including advice and potential investigation on Code of Conduct matters for recommendation of action to the Council.

(4) Findings and Rationale for Recommendations:

(a) Types of Complaints Requiring Advice or Investigation:

It was found that a continuum exists respecting the types of potential complaints that may be received alleging misconduct on the part of a Council member. Specifically, a complaint tabled as a Code of Conduct complaint could actually be one of the following:

- (i) a matter within the purview of the Criminal Code that should be referred to the Police;
- (ii) a matter charging serious misconduct (supposed malfeasance, breach of trust or other misconduct) where under subsection 100(1) of the *Municipal Act*, Council may pass a resolution requesting a judge of the Superior Court of Justice to investigate;
- (iii) a matter within the purview of the *Municipal Conflict of Interest Act*; where Council has no authority at present other than under s. 100(1) of the *Municipal Act*, and where both the complainant and the Council member would be advised to review the matter with their own legal counsel; and
- (iv) other matters not included in the Code of Conduct or other legislation.

Respecting the City's Code of Conduct and other ethics problems, it was strongly recommended by the Integrity Commissioner of Ontario and the City Solicitor that independent, objective appraisal and prosecution should not rely upon police expertise since the police are better suited to investigate strictly criminal matters. Nor should complaint investigation be undertaken by the City Solicitor. As part of the City administration under Council's direction, it is not appropriate for that office to undertake complaint investigation against elected members. The City Solicitor is better used for advising Council and its Committees on what the legislation says and means.

As concluded by the ESC, only a party who has no other dealings or employment with the City, involvement in political campaigning, or any financial interest in work of the City, should undertake actual complaint investigation to ensure arms-length and independent undertakings.

(b) Evaluation of Options:

As discussed with the Honourable Coulter A. A. Osborne, the Ontario Integrity Commissioner, it is not a realistic option that his office also acts in the capacity of the Integrity Commissioner for the City of Toronto. Specifically, the Province deals primarily with advice giving to MPP's on their particular potential conflict of interest situations largely related to financial disclosure and related matters. Taking on a (different) focus and process for the City of Toronto would not be the

most efficient route and would only be feasible if the role were limited to an advisory one, rather than an investigative and enforcement function. Even then, since the Provincial office is relatively small with only four staff (one of who deals primarily with the Provincial Lobbyist Registry system), absorption of any additional workload from the City of Toronto would require the addition of municipal expertise, staff and budgetary resources. Additionally, the Province would be required to amend its own legislation. At best, this option is a potential long-term solution. Similarly, the Province would need to have in place requirements additional to the *Conflict of Interest Act* to warrant Ontario establishing a Municipal Integrity Commissioner.

While ESC considered the option of an organization such as AMO being approached to establish a municipal-wide Integrity/Ethics Commissioner function, it was recognized that the City of Toronto has immediate and complex demands for action in this regard. To wait for other municipalities to consider their need to develop Codes of Conduct, determine the potential financial liabilities of complaints, and conduct their own assessments of models and costs, is not realistic for the City. This option could, however, be considered in the medium to longer-term depending on the interest of other municipalities. Should such interest emerge at some future point, the City of Toronto would be willing to consider its participation at that time in any province-wide system recommended.

The fourth option, where responsibility would rest with the ESC to recommend that a complaint be investigated, presents several difficulties. First, the role and authority of the ESC in such matters would inevitably be misunderstood. The ESC would be thought to have a mandate to sit in judgement of their colleagues on the Council and could also be accused itself of being in a conflict of interest position. This role has already been ruled out in the approved Terms of Reference for the ESC and holds no interest for ESC members themselves. There are also limits on the role the City Solicitor can perform as an advisor to the ESC because the City Solicitor may be required to provide the Council as a whole with legal advice on a matter before it. Accordingly, the Solicitor is not in a position to advise individual members on legal matters. Rather, determination as to whether an individual member of Council has an actual conflict of interest in a matter, is an issue that the member must determine with independent legal advice if necessary. Furthermore, only an external party should be engaged to investigate any formal complaint against a member of Council that alleges contravention of the Code of Conduct.

Given the complexity of the various legislation that regulates the conduct of Council members, ESC has determined that the establishment of a Code of Conduct advisory function for Council members would be valuable, as would the availability of consistency for complaint investigation respecting the Code of Conduct. Accordingly, the ESC has selected the fifth option for the City of Toronto, namely, the establishment of an Integrity Commissioner.

Appendix 2

Interim Complaint Procedure

[Note: Based on proposed Draft Act provisions, Draft Complaint Protocol and City of London procedures]

Part A: The Informal Interim Complaint Procedure.

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

- (1) advise the member of Council that the behaviour or activity contravenes the Code of Conduct;
- (2) encourage the member of Council to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (4) tell someone else (for example, a senior staff member or an officer of the organization) about your concerns, your comments to the member of Council and the response of the member of Council;
- (5) if applicable, confirm to the member of Council your satisfaction with the response of the member of Council; or, if applicable, advise the member of Council of your dissatisfaction with the response; and
- (6) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with an applicable judicial or quasi-judicial process.

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

Part B: The Formal Interim Complaint Procedure.

Requests For Inquiries s.1

Review request 1.(1) A member or non-member of Council, who has reasonable and probable grounds to believe that a member of Council has contravened the Code of Conduct for Members of Council (the “Code of Conduct”), may request that the matter (the “complaint”) be reviewed.

Complaint (2) The request shall be in writing and shall set out the grounds for the belief and the contravention alleged.

(3) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization.)

(4) A complaint shall set out the grounds for the belief and the contravention alleged and include a supporting affidavit that sets out the evidence in support of the complaint.

For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information respecting the complainant during normal business hours.

(5) Staff of the City Clerk’s division, who are commissioners for taking affidavits, are authorized to take the supporting affidavit.

Initial Classification by
Ethics Steering Committee S. 2

File with Clerk 2.(1) The request shall be filed with the City Clerk who shall forward the matter to the Ethics Steering Committee (the “ESC”) for initial classification, in consultation with the City Solicitor, to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies as described in subsection (3).

Deferral (2) If the complaint does not include a supporting affidavit, the Committee may defer the classification until an affidavit is received.

Requests For Inquiries s.1

(3) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, ESC shall instruct the City Clerk to advise the complainant in writing as follows:

- (a) if the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the City of Toronto Police Service;
- (b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
- (c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the City's Corporate Access and Privacy Office for review;
- (d) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
- (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of ESC to process, with any additional reasons and referrals as ESC considers appropriate.

(4) If the complaint, including any supporting affidavit, is with respect to the Code of Conduct it will be forwarded to a qualified external consultant for investigation.

External Consultant Investigation ss. 3-8

External
consultant

3. The City Solicitor shall retain one or more qualified external consultants to provide external consultant services under this process, in accordance with the City's approved purchasing policies.

Requests For Inquiries s.1

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| Investigation | <p>4.(1) The external consultant shall investigate and may attempt to settle the complaint.</p> <p>(2) Upon receipt of a complaint and supporting affidavit, the external consultant will proceed as follows:</p> <ul style="list-style-type: none">(a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation be filed within ten days; and(b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days. <p>(3) If necessary after reviewing the written materials, the external consultant may speak to anyone relevant to the complaint, examine any other documents relevant to the complaint and may enter any City work location relevant to the complaint for the purposes of investigation and settlement.</p> <p>(4) The external consultant may make interim reports to the ESC as required to address any instances of interference, obstruction or retaliation encountered during the investigation.</p> |
| Final report | <p>(5) The external consultant shall submit a final report on the complaint to the ESC, no later than 90 days after the making of the complaint, outlining the findings, the terms of any settlement, or recommended corrective action.</p> |
| Lawful recommendations | <p>(6) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.</p> |
| Refusal to conduct inquiry | <p>to 5. If the external consultant is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an inquiry, the external consultant shall not conduct an inquiry and shall state the reasons for not doing so in the report.</p> |

Requests For Inquiries s.1

- Member not 6. If the external consultant determines that there has been no
blameworthy contravention of the Code of Conduct or that a contravention occurred
although the member took all reasonable measures to prevent it, or that a
contravention occurred that was trivial or committed through inadvertence
or an error of judgement made in good faith, the external consultant shall so
state in the report and shall recommend that no penalty be imposed.
- Copies 7. The City Clerk shall give a copy of the report to the complainant and the
member whose conduct is concerned.
- File with Council 8. The ESC shall forward without comment, endorsement, or editing, the
report to the next meeting of Council.
- Duty of Council 9. Council shall consider and respond to the report within 90 days after the
day the report is laid before it.
- Payment of costs 10.(1) A complainant and a member of Council who are parties to a
complaint under this procedure shall each be reimbursed for actual and
reasonable legal and related expenses up to \$5,000.00.
- (2) Council, on the recommendation of the ESC, may consider the
reimbursement of costs above the limit in subsection 10(1) on a case by
case basis.
- (3) Costs shall only be reimbursed under this section to the complainant, if
the external consultant concludes that the complaint is not frivolous,
vexatious or made in bad faith.
- (4) Costs shall only be reimbursed under this section to the member of
Council, if the external consultant concludes that that there has been no
contravention of the Code of Conduct by the member of Council.

Appendix 3

Draft Advice Protocol Under Proposed Draft Act Provisions

Advice on Code of Conduct matters under the proposed provisions for Special Legislation:

(1) Limitation on advice to Members of Council on Code of Conduct matters.

Background: Under section __ of the proposed *City of Toronto Act (No.)*, 2002, (the “2002 Act”) members of Council may request advice from the Integrity Commissioner with respect to the members obligations under the Bill Code, subject to any by-law passed under section__ of the 2002 Act. The proposed by-law limitations will include the following provisions.

- (1) As the Integrity Commissioner is limited to providing advice on compliance with the Bill Code as such and not other legislation that may also regulate conduct, members of Council should either:
 - (a) seek general legal advice from the City Solicitor, in accordance with Council's policy for receiving legal advice with regard to matters relating to City business; or
 - (b) seek specific legal advice on compliance with other Acts, for example the Criminal Code of Canada, from his or her own legal counsel.
- (2) Requests for advice on compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, should be reviewed with the City's Corporate Access and Privacy Office.
- (3) If the request for advice is with respect to compliance with a more specific Council policy or program, the member of Council should review the matter with the City staff responsible for administering the policy or program.
- (4) In the case of a request for advice that includes obligations under the Code of Conduct and other policies or Acts, the Integrity Commissioner shall limit the advice provided to the Code of Conduct obligations and advise the member to review non-Code of Conduct matters with other appropriate City Staff, or his or her own legal counsel.
- (5) While the Integrity Commissioner may deal with conflict of interest questions in the context of requests for advice on compliance with the code of conduct (as designated by by-law under the Act), it is the policy of Council that a member should seek independent legal advice from his or her own legal counsel on specific questions of compliance with the *Municipal Conflict of Interest Act*.
- (2) Continuing Education.

The Commissioner will provide outreach program to members of Council and their staff respecting knowledge of the 2002 Act and office procedures, subject to any funding or other limitations specified by Council, from time to time.

Appendix 4

Draft Complaint Protocol Under Proposed Draft Act Provisions

- (1) Type of inquiries.

This protocol applies to the processing of a request for an inquiry or complaint (the "complaint") respecting non-compliance with the Code of Conduct under the proposed *City of Toronto Act (No.)*, 2002 (the "Act") or other matters as assigned to the Integrity Commissioner (the "Commissioner") under that Act by the following:

- (a) a member of Council under subsection __ of the Act;
 - (b) Council under subsection __ of the Act; or
 - (a) a person who is not a member of Council under a by-law passed under section __ of the Act.
- (2) Written complaint.
 - (1) All complaints shall be in writing and signed by an identifiable individual (which includes the authorized signing officer of an organization).
 - (2) A complaint shall set out the grounds for the belief and the contravention alleged and include a supporting affidavit that sets out the evidence in support of the complaint.
 - (3) Staff of the City Clerk's division, who are commissioners for taking affidavits, are authorized to take the supporting affidavit.
- (3) Initial classification by Ethics Steering Committee.
 - (1) Any complaints under the Act or this by-law shall be filed with the City Clerk who shall forward the matter to the Ethics Steering Committee (the "ESC") for initial classification, in consultation with the City Solicitor to determine if the matter is within the jurisdiction of the Commissioner.
 - (2) If the complaint does not include a supporting affidavit, the ESC may defer the classification until an affidavit is received, but a complaint shall not be forwarded to the Commissioner without a supporting affidavit.
 - (3) If the complaint, including any supporting affidavit, is not, on its face, a matter within the jurisdiction of the Commissioner, ESC shall instruct the City Clerk to advise the complainant in writing as follows:
 - (a) if the complaint on its face is an allegation of a criminal nature consistent with the Criminal Code of Canada, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the City of Toronto Police Service;
 - (b) if the complaint on its face is an allegation of non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
 - (c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Director of Corporate Access and Privacy for review;

- (d) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
 - (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of ESC to process, with any additional reasons and referrals, as ESC considers appropriate.
 - (4) If the complaint, including any supporting affidavit, is on its face a matter within the jurisdiction of the Commissioner, it shall be forwarded to the Commissioner after a supporting affidavit has been received.
- (4) Review by Commissioner:
 - (1) Upon receipt of a complaint and supporting affidavit, the Commissioner will proceed as follows:
 - (a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation be filed within ten days; and
 - (b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days.
 - (2) Upon receipt of the reply, based on the material provided, the Commissioner will determine that,
 - (a) the complaint can be resolved without oral evidence, in which event, the Commissioner will make a Report; or
 - (b) a hearing is required and notifies the parties of the hearing date with a request that any additional material be filed five days prior to the hearing.
 - (3) At the hearing, all witnesses shall give evidence on oath or affirmation.
 - (4) The parties are entitled to examine and cross-examine any witness, either personally, or by an agent or counsel.
 - (5) If the circumstances warrant, the Commissioner may direct that the evidence be recorded.
 - (6) The Commissioner may retain counsel to assist in the presentation of evidence and argument.

[Note: The authority to hear oral evidence is not intended to be authority to hold a full public inquiry under the *Public Inquiries Act*. Also, other matters to be determined in the future in consultation with the Commissioner and based, in part, on the experience under the interim procedure, include time frames and the “settlement authority” the Commissioner should have.]

The Administration Committee reports, for the information of Council, having also had before it a copy of the 2001-2002 Annual Report of the Office of the Integrity Commissioner, Ontario, which was forwarded to all Members of Council with the November 5, 2002, agenda of the Administration Committee, and a copy thereof is also on file in the Office of the City Clerk, City Hall.