

**Toronto Computer Leasing Inquiry
Research Paper**

CONFLICT OF INTEREST

**Volume 2: City of Toronto and
Recommendations**

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Executive Summary and Summary of Recommendations

Part 1: Introduction

The focus of this second and final volume on conflict of interest includes:

- Selected observations on practices in other jurisdictions.
- An overview of current policies and practices in place at the City of Toronto.
- A set of recommended changes to the City's current policies and practices.

Volume 2 builds on the information presented in the Toronto Computer Leasing Inquiry Research Paper *Conflict of Interest Volume 1*, including

- An overview of definitions of conflict of interest.
- A survey of different approaches to conflict of interest in the public and private sectors.
- An overview of approaches to compliance and enforcement.
- An assessment of the effectiveness of conflict of interest policies.

The preparation of Volumes 1 and 2 involved reviews of over 1,500 pages of documents and interviews with 24 individuals including current and former municipal and other government officials, as well as research, academics and other experts. Documentary resources included legislation, government and private sector reports and research/policy documents, and academic and other expert analysis/writings.

Part 2: Overview of Other Jurisdictions

From the research, four common elements emerged that are addressed in conflict of interest policies across all jurisdictions:

- Definitions, Categories and Rules.
- Disclosure of Interests.
- Oversight.
- Building an Ethical Organization.

Definitions, Categories and Rules

In the public sector, conflict of interest rules are directed at ensuring that elected officials and employees do not benefit personally, beyond what would be normally considered a regular benefit of the job. In the private sector, the rules are similar, although with the emphasis necessarily being more on business/commercial considerations as opposed to the public interest.

Rules: Across organizations the rules of conduct are consistent at a high level, although there is considerable difference in terms of prescriptiveness and amount of detail. In the U.S., the rules are generally more prescriptive and explicit than in Canada, where rules tend to be more *values based*. There does not appear to be any evidence from the research to suggest that one approach is any more effective.

Mandating Policies: There are substantial differences across jurisdictions in terms of how conflict of interest rules are mandated. In the U.S, conflict of interest policies for elected officials are usually enshrined in legislation, including local bylaws or ordinances. In Canada, these are often set out in a combination

of legislation and policy, with most provinces having legislation in place that governs conflict of interest matters respecting members of municipal councils. In addition, individual municipalities often express their conflict of interest policies for elected officials in the form of a by-law. In Canada, conflict of interest rules for federal, provincial, and municipal public employees are usually set out in policies, directives, or guidelines as opposed to statutes.

Disclosure of Interests

In all jurisdictions, officials are expected to use their own judgement in withdrawing from situations on a case-by-case basis as real, perceived, or apparent conflicts arise in the course of regular business. Some jurisdictions, including many municipalities in the U.S., go further to require that public or in some jurisdictions, confidential disclosure of interests be made on a regular basis to an oversight body such as an arms-length integrity/ethics commissioner or commission/board). Other jurisdictions – including most Canadian municipalities – have no requirement for public disclosure, relying solely on the judgement and integrity of the individual elected official.

At the state and federal level, and in some U.S. municipalities, senior levels of the administrative are also required to disclose. This is rarely the case in Canada, although this is anticipated in the next round of federal ethics policy changes expected in early 2004.

Oversight

In jurisdictions where disclosure is required, there is usually some form of oversight body, most often an arms-length commission/board or designated individual. At the municipal level in Canada, independent oversight is typically not in place and is not viewed as being necessary given that most municipalities do not require up-front, regular disclosure of interests. This is generally

consistent with the historical tradition of part-time elected municipal officials in Ontario. U.S. research indicates that disclosure of interests for part-time Councillors is problematic given that by definition, individuals in these positions have other employment.

Building an Ethical Organization

Conflict of interest rules are generally viewed as meaningless if they have not been properly adopted, implemented, or enforced. Successful implementation requires an ongoing organizational commitment to emphasize the critical importance of ethical business conduct. The research indicates that one of the most important aspects of creating an ethical climate is to ensure that ethics are clearly and formally made part of every aspect of the organization. Key best practice components from the research include:

- Ensuring a strong management commitment to the ethics process.
- Articulating the organization's values.
- Organizational analysis against the desired outcome or end-state.
- Ongoing training.
- Follow-up and monitoring.

Part 3: Overview of the City of Toronto

Governing Legislation

Five statutes govern the conduct of elected officials with respect to conflict of interest at the municipal level in Ontario:

- *The Municipal Act, 2001 (Government of Ontario).*
- *The Municipal Conflict of Interest Act (Government of Ontario).*

- *The Municipal Elections Act (Government of Ontario).*
- *The Municipal Freedom of Information and Protection of Privacy Act (Government of Ontario).*
- *The Criminal Code of Canada (Government of Canada)*

The Municipal Conflict of Interest Act (Ontario) is the primary provincial legislation establishing the minimum public expectations with respect to conflict of interest for municipal elected officials. The Act, originally proclaimed in 1990, has been the subject of considerable discussion and debate. A revised version of the Act (the *Local Government Disclosure of Interest Act*) was passed by the provincial government in the mid-1990's but not enacted in response to municipal objections to requirements for confidential disclosure of interests to the clerk of the municipality.

The Municipal Act, 2001 provides for high-level regulation of the conduct of Councillors through the "Declaration of Office" and provisions requiring Councillors to act or to refrain from acting on certain financial matters.

The Municipal Elections Act establishes offences and penalties with respect to campaigns and elections.

The Municipal Freedom of Information and Protection of Privacy Act provides a right of public access to information under the control of City Council and requires the protection of personal information in the City's records.

The Criminal Code of Canada includes three offences with respect to the actions of municipal councillors: breach of trust by a public officer, municipal corruption, and public servants refusing to deliver property.

Code of Conduct for Elected Officials

In 1999, City Council approved a Code of Conduct for elected officials that includes conflict of interest requirements for individual Councillors. In deciding to develop a Code of Conduct that would work in concert with the various provincial and federal statutes, Council put in place rules that are generally viewed as being clearer and more specific with respect to what constitutes ethical behaviour by elected officials. In adopting the less common but more comprehensive Code of Conduct model, Toronto is a forerunner.

Conflict of Interest Policy for City Employees

Prior to amalgamation, most of the former municipalities had some form of conflict of interest policy or code of conduct for their employees. In August 2000 a new Conflict of Interest policy was approved under which City employees are expected to conduct themselves with personal integrity, ethics, honesty and diligence in performing their duties. Particularly valuable and useful are the sample questions and answers in Appendix 1 that provide a range of scenarios. While some other public sector organizations include illustrative examples, they are often not as clear or comprehensive.

Categories of Conflict Rules: Elected Officials

The categories of rules contained in the members' Code of Conduct are for the most part consistent with those codified in other jurisdictions. The Code reflects a values-based approach, rather than rules that are excessively prescriptive in nature, the expectation being that Councillors will exercise appropriate judgement if a conflict situation presents itself.

Categories of Rules: City Employees

The categories of rules for City employees are consistent with those found in other jurisdictions. The City's conflict of interest policy for staff is not exhaustively prescriptive in terms of detailed accounts of prohibited behaviour. Consistent with the Canadian tradition, it relies on higher-level, values-based statements.

Disclosure of Interests

The City of Toronto (as with other Ontario municipalities) does not require confidential or public disclosure of interests for its elected officials or employees. Toronto relies on the protocol for disclosure outlined in the *Municipal Conflict of Interest Act* whereby a member must publicly withdraw from the proceedings when a conflict arises. Employees are expected to disclose first to their immediate supervisor and through to more senior levels if required.

Oversight

The City's Ethics Steering Committee is responsible for:

- *“Ensuring that policy matters contained in the Code of Conduct are adequate as guidelines for Member conduct, as well as establishing any required new policies.*
- *Ensuring that Council establishes a required process to deal with any complaints or concerns regarding alleged non-compliance with the Code of Conduct by a member.*
- *Ensuring that the complaint process is followed and to provide recommendations for any external investigation of alleged non compliance with the Code of Conduct.”*

In mid-2002, the Ethics Steering Committee recommended the creation of an independent Integrity Commissioner, based on the current provincial model, to apply and administer the Code of Conduct. This represents a major step forward in the municipal administration of codes of conduct and conflict of interest policies for elected officials in Ontario.

The Commissioner would have responsibility for:

- Complaint assessment/investigation related to Council's Code of Conduct.
- Giving advice to members of Council on potential conflict of interest situations.
- Publishing an annual report on the findings of typical cases/inquiries.
- In cases where a member of Council has been found to be in violation of the code of conduct or other matter, recommending to Council that a penalty be imposed with Council making the final decision with respect to whether and what penalty will be enacted.

Compared to other governments that have independent integrity commissioners, one responsibility that has not been included is mandatory disclosure of interests under the Code of Conduct (the most common approach in Canada being one of confidential disclosure). Council did not include this in its proposed approach, although the issue was raised at the time in staff analysis:

“Currently, Council Members do not have the financial and asset disclosure requirements of many other jurisdictions. This actually comprises the central, or sole, mandate of most Ethics Commissioners. The City of Toronto could introduce disclosure requirements for its Council members. This would strengthen justifying the establishment of an Ethics Integrity Commissioner for the City”.

The intention is that this Commissioner would have significant powers with respect to investigation and enforcement, although the final decision on penalties

would rest with Council. As currently proposed, this would require provincial enabling legislation, although in the absence of this legislation it may be possible for worthwhile elements of the City's approach to be implemented, albeit without the enforcement capacity that is ultimately required.

Developing the Culture

It is clear from the research and interviews that during the period following amalgamation, senior City officials were keenly aware of the importance of taking action to build a new, consolidated culture. By necessity, the initial emphasis was on policy development and consolidation with respect to existing conflict of interest policies. Since that time, the City has considerably intensified its effort consolidate and build a unified culture based on high ethical and public service standards through the Toronto Public Service Initiative.

This Initiative is a well-designed and articulated corporate organizational health and development project reporting directly to the CAO. The Initiative focuses on excellence in public service and consolidates all corporate policies, documents, and initiatives that share the same values and principals. The stated long-term vision is the creation of "a strong culture, healthy climate and good morale". City staff have developed a multi-year implementation strategy that incorporates both the theory and best practices of Change Management, including:

- A formal assessment of need as well as framework and goal development in 2002.
- A defined strategy, a multi-disciplined project infrastructure in the CAO's office, staff workshops/training sessions, information meetings and other communications tools in 2003.
- The creation of champions, ongoing workshops and staff guides, additional public communication, and a major staff conference for 2004.

The CAO, other senior executives, and more recently, the new Mayor have been and are expected to continue to be highly visible throughout the process. This is consistent with the emphasis in the literature on Change Management on senior management needing to be a visible example in demonstrating the organization's belief in ethical behaviour.

Part 4: Input and Recommendations

The City of Toronto has taken a leadership role in many areas related to ethics. This is not to say that the City has a new, consolidated culture in place at the present – with any major amalgamation, the development of a consistent and mature culture based on high standards and expectations can take anywhere from five to ten years. In both word and deed, however, senior City officials have recognized the need for a clear Vision, commonly understood and shared values that will guide behaviour, and have committed themselves to the rigour required to turn value statements into an operational reality.

In the internal and external interviews for this project, individuals expressed satisfaction with the progress and the direction in which the City is moving. When asked whether changes should be made in any aspects of the City's current approach, identified areas or issues were not view as problems or shortcomings, but rather opportunities to extend Toronto's leadership in this area. Specific themes included:

- It was suggested that the current approach could be further strengthened by the expanding the number of case studies and creating additional descriptive examples based on real job situations.
- It was suggested that there is an opportunity to consolidate other policies that impact on or have implications for conflict of interest for Councillors in the current Code of Conduct. A similar opportunity was identified with

respect to a consolidated approach for City employees, again perhaps in the form of a Code of Conduct.

- There was a general view that the next major leadership step for Council should be in the form of requiring confidential disclosure of interests to the proposed Integrity Commissioner.
- There is a view that the current language and requirements with respect to the receipt of gifts and benefits for elected officials could be made more definitive.
- There was a general sense that Councillor training could be enhanced by more regular discussion between and among Councillors and also involving senior staff, including making more use of a *real-life* case study approach. Similar views were expressed with respect to employees and the benefit of having a more ongoing training, perhaps as an integrated component of the Toronto Public Service Initiative.
- It was noted that no mechanism currently existed to evaluate in an ongoing way the extent to which the policy (and ethics more generally) are uniformly applied, particularly with respect interpretations, advice and disciplinary actions.

Recommendations

Disclosure of Interests

It is recommended that Council adopt a policy that provides for confidential disclosure of financial assets and contingent liabilities for Council members to the proposed Integrity Commissioner. In addition, it is recommended that a similar policy of confidential disclosure be adopted for the Chief Administrative Officer and Commissioners.

For elected officials, the proposed City Integrity Commissioner would be responsible for reviewing confidential disclosure forms on a scheduled basis and providing advice and guidance to Councillors with respect to areas of apparent, potential, or real conflicts. For senior administrative staff, a designated official in an *ethics centre of excellence* to be established in the CAO's Office (see the next set of recommendations with respect to *Continuing to Build an Ethical Culture*) would have similar responsibilities.

Continuing to Build an Ethical Organization

It is recommended that the administration create an *ethics centre of excellence* in the organization that would have a mandate to develop a comprehensive ethics program for the City and would have ongoing responsibility for developing and leading the execution of future strategies and plans to enhance ethical behaviour in the City. The centre would be responsible for:

- Developing a comprehensive and leading edge ethics training and management program.
- Ensuring that the review of conflict of interest policy becomes part of performance management and appraisal system for all levels of the organization, in addition to management.
- Ensuring that ethical language and key messages demonstrating the City's commitment to high standards of ethical behaviour are incorporated in all City policy and procedure documents and City communications more generally.
- Creating an "ethics hotline" that would allow confidential disclosure and discussion of conflict of interest and other ethics-related issues by employees.
- Developing a regular, on-line ethics information/interpretation bulletin and discussion forum.

- Developing a user-friendly, plain-language staff guidebook that could be tailored to the needs of different parts of the organization.
- Ongoing professional liaison with recognized external organizations and experts.
- Developing an annual public service week, as a citywide focus of professional development and an opportunity to celebrate achievements.

Secondary Recommendations

- As part of the proposed citywide ethics management program, that Council and senior administrative officials meet regularly on an informal basis (i.e. not a formal Council meeting) to discuss ethics and code of conduct issues, including the use of case studies.
- That other policies in place or under development that have an impact on or implications for conflict of interest for elected officials (for example, office expenses for Councillors, the process for dealing with unsolicited proposals) be referenced or included in the Code of Conduct for elected officials.
- That the current Conflict of Interest policy for City employees be incorporated into a broader and more comprehensive code of conduct for the public service and that this include all policies in place or under development that have an impact on or implications for conflict of interest for employees be included, e.g. policies on employee participation, post-employment restrictions, procurement.
- That the language contained in the Code of Conduct for Members of Council with respect to gifts and benefits be clarified and made more transparent and specific.

Part 1

Introduction

The focus of this second and final volume on conflict of interest is on issues and challenges facing the City of Toronto as well as recommendations for potential changes to its current approach to conflict of interest.

In addition to this Introduction, the report is presented in four sections:

- Selected observations on practices in other jurisdictions.
- An overview of current policies and practices in place at the City of Toronto and a description of conflict of interest and related issues and challenges facing the City of Toronto.
- Flowing from the description of issues and challenges, a set of recommendations for changes to the City's current policies and practices.

This report builds on the information presented the Toronto Computer Leasing Inquiry Research Paper *Conflict of Interest Volume 1*, including

- An overview of definitions of conflict of interest.
- A survey of different approaches to conflict of interest in the public and private sectors, including the Canadian and U.S. federal governments, various Canadian provinces and U.S. states, as well as selected Canadian and U.S. municipalities.
- A summary of conflict of interest approaches and practices in the private sector.
- An overview of approaches to compliance and enforcement related to conflict of interest policies.

- An assessment of the effectiveness of conflict of interest policies, including best practices related to institutionalizing ethical behaviour in organizational culture.

Research Approach

The preparation of Volumes 1 and 2 included reviews of over 1,500 pages of documents and interviewing 24 individuals including current and former municipal and other government officials, as well as researchers, academics, and other experts.

Documentary resources focused on publicly available material (either in print or electronic format), including legislation, government and private sector reports and research/policy documents, academic and other expert analysis/writings.

Part 2

Overview of Other Jurisdictions

The purpose of this section is to provide a brief overview of general approaches and practices to managing conflict of interest in North American jurisdictions.

From the research, four common elements emerged that are generally addressed in conflict of interest policies across all jurisdictions:

- Definitions, Categories and Rules.
- Disclosure of Interests.
- Oversight.
- Building an Ethical Organization.

The following is a brief overview of each element.

Definitions, Categories and Rules

As noted in Volume 1, the literature, practices of other jurisdictions, and expert/practitioner interviews indicate that many organizations have some form of conflict of interest policy, no matter how basic. In the public sector, the provisions are directed at ensuring that elected officials and employees do not benefit personally, beyond what would be normally considered a regular benefit of the job. In the private sector, the rules are similar, but with a different emphasis on business/commercial considerations as opposed to the public interest. This different emphasis includes, for example, rules related to the use of insider information, trading information with competitors, or use of company property. These aspects of private sector conflict of interest policies are often explained in more detail than are other aspects. Regardless of the jurisdiction or

sector, however, most definitions seem to have the same purpose – that of protecting the organization against situations where an individual’s private interest conflicts in some way with the interests of the organization.

Rules

Across all organizations, both public and private, that have conflict of interest rules in place, the rules of conduct are generally quite consistent at a high level.

The following are typical examples:

- Not using one’s position of employment to further one’s private interest.
- Not accepting gifts, benefits, or fees that are connected in any way to the duties of the job.
- Not using government or company property for non-work related matters.
- Not using or sharing confidential information.
- Not using insider information to further one’s personal interests.
- Not engaging in any transaction in which profit can be made from one’s official position or authority.
- Not engaging in or accepting employment for a private or public interest when that employment or service is incompatible or in conflict with employee’s official duties or when that employment may tend to impair independence of judgment or action in the performance of official duties.
- Not engaging in work that is directly related to work carried out in an official capacity for a period after leaving employment (i.e. post employment).

Prescriptiveness

While the general types of rules are similar across jurisdictions and sectors, there is considerable difference in terms of the prescriptiveness and amount of detail with which each rule is articulated.

In U.S. jurisdictions, the approach generally is to provide rules that are more directive and explicit in terms of what does and, in some jurisdictions, does not constitute a conflict. This appears to be part of a generally more prescriptive tradition of public administration in that country.

In Canada, conflict of interest rules are more often *values based* in language and description. This approach tends to be less explicit in terms of prescriptive rules. Although often accompanied by extensive practical examples or case studies, the general approach relies on individual judgement/discretion in recognizing and reporting conflicts, rather than providing an exhaustive list of rules that tries to describe every conceivable conflict situation. Frameworks are sometimes developed to help individuals analyse their situation and determine the most appropriate response.

As noted in Volume 1, there does not appear to be any evidence from the research to suggest that one approach is any more effective. Rather, all indications are that the divergence in approach reflects more general differences in the respective national cultures and traditions of public administration. Also noted in Volume 1, the research generally supports the view that efforts to prescribe behaviour in great detail can become progressively less effective.

Mandating Policies

As indicated in Volume 1, there are differences across jurisdictions in terms of how conflict of interest rules are mandated.

In the U.S, conflict of interest policies for elected officials are usually enshrined in legislation. For municipalities, the primary vehicle is local bylaws or ordinances. Often, there is overarching state legislation that is supplemented by this local legislation.

In some cases, these statutory requirements have been embedded in a broader and more comprehensive Code of Conduct that contains, in addition to the statutory conflict of interest requirements, the principles and values of the organization, any additional requirements specific to that municipality, and case studies/examples.

Conflict of Interest rules for public employees in U.S. are also generally reflected in statutes. For municipalities, this can include local ordinances and/or state-wide overarching legislation. As with their elected counterparts, conflict of interest policies for public employee are increasingly incorporated into broader Codes of Conduct.

A relatively small number of states have developed consolidated Codes of Conduct that apply to both elected officials and public employees. However, in these states, the ongoing administration and oversight of these Codes for elected officials and public employees is kept separate. Also, within these consolidated Codes, one finds sub-sections of additional requirements that are unique to each group. The separate administration and unique additional requirements are intended to recognize and address the different roles of elected officials and public employees.

In Canada, at the provincial and federal level, conflict of interest requirements for elected officials are often set out in a combination of legislation and policy, with jurisdictions increasingly moving towards the more comprehensive Code of Conduct approach. At the municipal level, most Canadian provinces have

legislation in some form that governs conflict of interest matters respecting members of municipal council. Within this provincial legislation, municipalities often express their conflict of interest policies for elected officials in the form of a by-law. Compared to the U.S., it is less common to find those rules housed under a more comprehensive Code of Conduct for elected officials at the municipal level.

Conflict of interest rules for federal, provincial, and municipal public employees are usually set out in policies, directives, or guidelines as opposed to statute. Again, the more comprehensive Code of Conduct approach is not used as extensively as in the U.S.

Disclosure of Interests

Over the last thirty years, it has become increasingly apparent to elected and non-elected officials that to protect and be seen to protect the interests of the public, third party assurances are required. In response, federal, state, provincial and many municipal jurisdictions across North America have put in place disclosure of interests policies and supporting infrastructures to allow for disclosure.

In all jurisdictions, officials are expected to use their own judgement in withdrawing from situations on a case-by-case basis as real, perceived, or apparent conflicts arise in the course of regular business. Some jurisdictions go further to require that confidential (or in some jurisdictions, public) disclosure of interests be made on a regular basis to a designated third party (typically an oversight body such as an arms-length integrity/ethics commissioner or commission/board). Other jurisdictions have no requirement for public disclosure, relying solely on the judgement and integrity of the individual elected

official. Disclosure requirements typically focus on financial interests in the form of assets or contingent liabilities.

In the U.S., most municipalities require regular, public disclosure of financial interests at predetermined points during the tenure of an elected official. Public disclosure usually takes place before taking office, and can be required quarterly, semi-annually, or annually after that. In terms of the day-to-day conduct of business, most U.S. municipal conflict of interest rules for elected officials usually contain a specific “withdrawal protocol”. This protocol prescribes how council members should address a conflict during a council meeting and sets the expectation that the official will withdraw from public or in camera sessions.

It is also not uncommon in the U.S. for public servants at the municipal level who hold certain specified positions to be required to disclose financial interests either publicly or confidentially. Sometimes this is done by position but more frequently by compensation level, with \$40,000 to \$50,000 (\$U.S.) being a common compensation threshold.

In Canada, both at the federal and provincial level, confidential disclosure of private assets by elected officials is required through the submission of a disclosure report at various predetermined times during the term of office, as well as when a specific conflict arises. In some jurisdictions, public disclosure is required, i.e. making the information provided on a disclosure report a public document.

With respect to public servants, the general practice in Canada has been not to require regular, up-front disclosure, either publicly or confidentially. Where there are requirements for public servants (e.g. Deputy Minister at the federal level) to disclose private interests, there is usually a separate body or designate (i.e. separate and distinct from the body responsible for overseeing elected officials) assigned to review these disclosure reports. Disclosure of interests for additional

high-ranking public servants is anticipated to be included in the next round of federal ethics policy changes expected in early 2004.

For Canadian municipalities, confidential or public disclosure of assets by elected officials is generally not in place. Provincial legislation across Canada specifies procedures for elected officials related to withdrawal from council meetings either during public or in camera sessions, but does not require detailed disclosure of financial interests. Disclosure for public employees is governed by policy on a municipality-by-municipality basis, as opposed to provincial legislation. Public employees are generally expected to disclose real, apparent, or perceive conflicts to their supervisors as these arise. In these situations, senior municipal officials would make disclosure to, for example, the City Manager, Clerk or Deputy Clerk, or a subset of Council, for example, the Mayor, Deputy Mayor, and/or head of the administration committee.

Oversight

In jurisdictions where disclosure is required, there is usually some form of oversight body. Commonly an arms-length commission/board or designated individual, this body is charged with the responsibility to review disclosure reports, discuss them with the individual, provide guidance and direction on areas that could present conflicts, hear complaints and in some instances, impose penalties for infractions.

In the U.S., there are two common approaches or combination of approaches to oversight that exist at every level of government:

- An internal ethics committee made up of elected officials and/or
- An arm-length ethics commission made up of independent parties.

Internal ethics committees of elected officials are often in place in parallel with arms-length bodies. Experts indicate that these committees of elected officials alone would not be perceived as effective. In the U.S., it is not unusual for the same body to review disclosure reports for both elected officials and public servants.

In Canada, over the last fifteen years, the federal government and most provinces have put in place similar oversight bodies – usually in the form of an independent (with the exception of the federal government) authority responsible for reviewing ethics issues for elected officials.

At the municipal level of government across Canada, oversight by an independent authority is typically not in place and is not viewed as being necessary given that most municipalities do not require up-front, regular disclosure of interests. Rather, the standing approach puts the onus on the elected official to declare a conflict at the time it presents itself. This is generally consistent with the historical tradition of part-time elected officials at the municipal level. (Research from the U.S. suggests that requiring disclosure for part-time elected officials can be very problematic, given that these individuals by definition usually have significant other employment and/or ongoing business interests.) It also reflects the reality that municipalities – such as those in Ontario – do not have the legal authority under provincial legislation to establish effective, independent ethics oversight bodies with the substantive and compelling investigative and adjudicative powers.

Building an Ethical Organization

An important and central recurring theme in the research is the importance of culture and values for guiding the behaviour of members of an organization. Organizations that are serious about operating with high ethical standards

usually demonstrate this commitment through sustained and well-resourced efforts to develop, support, and reinforce the desired operating values.

Much has been written about the importance of institutionalizing ethics in organizations. As stated in *Conflict of Interest Volume 1*, rules are generally viewed as meaningless if they have not been properly adopted, implemented, or enforced. Successful implementation requires an ongoing organizational commitment that emphasizes the critical importance of ethical business conduct. Effective results in this context would include:

- A clear vision and picture of integrity throughout the organization.
- A vision that is owned and embodied by senior management.
- A reward system that is aligned with the vision of integrity.
- Policies and practices that are aligned with the vision.
- A widely held understanding that every significant management decision has ethical and value dimensions.

In order for ethics to be truly institutionalized within an organization, the entire organization must agree on the importance of ethical behaviour, and, more importantly, there must be a collective standard for the organization to follow.

During the research, experts suggested that one of the most important aspects of creating an ethical climate is to ensure that ethics are clearly and formally made part of every aspect of the organization. Examples of best practices in this regard include:

- Creating a centre of responsibility in the organization, the purpose of which would be to oversee a comprehensive ethics management program (e.g. policies, procedures, training, follow-up) and ensuring that a discussion of ethics was included in every aspect of the organization's business.

- Considering conflict of interest rules throughout the policy development process, including that consideration be given at every juncture about how decisions would be perceived from the “outside”, and making sure that the organization was clear on how it would react in a conflict situation.
- Ensuring that there are processes built into the organization that reward ethical behaviour and establish clear and explicit consequences for unethical behaviour.

The literature on ethics and organizational development is consistent with respect to the steps that should be taken to institutionalize ethics in the workplace. Organizations that want to build an ethical culture can take several approaches or combination of approaches to make this happen. As discussed in more detail in *Conflict of Interest Volume 1*, key best practice components from the research include:

- *Ensuring Management Commitment to the Ethics Process:* The literature stresses that management needs to be a visible example in demonstrating the organization’s belief in ethical behaviour. This includes guiding the process of developing, ongoing communication, the creation of ethics “champions”, as well as demonstrating clear and explicit consequences for unethical behaviour.
- *Articulating the Organization’s Values:* The research confirms that it is essential to communicate the core values of the organization so that employees understand what is fundamentally important to the organization. This process of reflection and dialogue is seen as one of the most important aspects of creating an ethical organization and is a key to successful implementation.
- *Organizational Analysis:* Experts emphasize a thorough analysis of the culture and/or ethical climate of the organization against the desired values/guiding principles. The purpose of this review would be to determine organizational readiness, i.e. the extent to which current

policies, culture, behaviour, structures, etc. are aligned or not aligned with the new vision of the future.

- *Training*: Ongoing training emerges as a key component of institutionalizing ethics in the workplace. Training typically also involves statements from senior management emphasizing ethical business practices, discussions of the corporate code of ethics, case studies, and commendations or public acknowledgement of good ethical behaviour by employees).
- *Follow-up*: Follow-up refers to monitoring change, evaluating the results, and ultimately determining whether institutionalization of the desired behaviour has taken place within an organization.

Part 3

Overview of the City of Toronto

The section provides an overview of Code of Conduct/Conflict of Interest policies and practices currently in place in the City of Toronto.

Governing Legislation

As referenced in the City of Toronto's Code of Conduct for Elected Officials, five statutes govern the conduct of municipalities in Ontario with respect to conflict of interest:

- *The Municipal Act, 2001 (Government of Ontario).*
- *The Municipal Conflict of Interest Act (Government of Ontario).*
- *The Municipal Elections Act (Government of Ontario).*
- *The Municipal Freedom of Information and Protection of Privacy Act (Government of Ontario).*
- *The Criminal Code of Canada (Government of Canada)*

These Acts are briefly described below.

The Municipal Conflict of Interest Act (Ontario)

The *Municipal Conflict of Interest Act* is the primary provincial legislation intended to set out the minimum public expectations with respect to conflict of interest for municipal elected officials. The Act provides the following definition of conflict:

- *“No member of council should engage in any financial or other activity, which would tend to impair the members’ independence of judgement or decision, or that is incompatible with the proper discharge of his or her official duties in the public interest. No member should use his or her office to seek to influence a decision, made or to be made by another person, so as to further the member’s personal interest or improperly to further another person’s personal interest.”*

The Act emphasizes that that Councillors should make decisions based on the public interest and not based on their pecuniary interests. Members of Councils are required to disclose any pecuniary interest in a matter under discussion and to refrain from participating in the discussion or decision on any such matter.

The Act, originally proclaimed in 1990, has been the subject of considerable discussion and debate in the intervening years. Within parts of the municipal policy community, the general view is that the Act is becoming increasingly outdated, particularly with respect to the definition of “financial interest” and the exclusion of the category of “gifts and benefits”.

The need to strengthen provincial legislative provisions in this area has been recognized by previous provincial administrations. In the early 1990s, the Ministry of Municipal Affairs undertook an extensive review of the Act which resulting in the preparation of a revised statute, entitled the *Local Government Disclosure of Interests Act*. This legislation would have required upfront, regular, and confidential disclosure of the interests of elected officials to the clerk of the municipality. The Act did not propose similar requirements for public employees.

As reported in interviews, the new legislation was the subject of intense opposition from municipal councils across Ontario. As a result, the Act, while actually passed by the provincial legislature, was never proclaimed.

The *Municipal Act, 2001*: The *Municipal Act, 2001* provides for high-level regulation of the conduct of Councillors. Before assuming the duties of office, every Councillor must make a “Declaration of Office” as follows:

“I, [name],, do solemnly promise and declare that I will truly, faithfully and impartially, to the best of my knowledge and ability, execute the office to which I have been elected in this municipality, that I have not received and will not receive any payment or reward, or promise thereof, for the exercise of any partiality or malversation or other undue execution of such office, and that I will disclose any pecuniary interest, direct or indirect as required by and in accordance with the Municipal Conflict of Interest Act ...”*

(*Malversation: corrupt behaviour in a position of trust, corrupt administrations of public money, etc.)

The *Municipal Act, 2001* also contains provisions requiring Councillors to act or to refrain from acting on certain financial matters.

The Municipal Elections Act: The *Municipal Elections Act* establishes offences and penalties with respect to campaigns and elections.

The Municipal Freedom of Information and Protection of Privacy Act: The *Municipal Freedom of Information and Protection of Privacy Act* provides a right of public access to information under the control of City Council. The Act also requires that the City protect the privacy of an individual’s personal information existing in the City’s records and sets out rules regarding the collection, retention, use, disclosure and disposal of personal information in the City’s custody and control.

The Criminal Code of Canada: The *Criminal Code of Canada* includes three offences with respect to the actions of municipal councillors: breach of trust by a

public officer, municipal corruption, and public servants refusing or failing to deliver municipal property held by a member to a person who is authorized to demand it.

Code of Conduct for Elected Officials

In 1999, City Council approved a Code of Conduct for elected officials that included conflict of interest requirements for individual Councillors. The general view at the time was that it would not be appropriate to rely solely on the various provincial legislative requirements. It was felt by Council that these were too dispersed and potentially confusing, as well as too vague in places.

In deciding to develop a Code of Conduct that would work in concert with the various provincial and federal statutes, Council put in place rules that are generally viewed as being clearer and more specific with respect to what constitutes ethical behaviour by elected officials.

The Code of Conduct is framed by and complementary to the provisions of the various governing statutes. Its preamble establishes an appropriately high-minded tone in stating the expectation that *“The public is entitled to expect the highest standards of conduct from the members it elects to local government. In turn, such standards will protect and maintain the City of Toronto’s reputation and integrity”*. In its key statements of principle, it speaks to the responsibilities of members of Council and provides guidance with respect to the separation of public and private interests.

- *“Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner.*
- *No member shall use the influence of their office for any purpose other than for the exercise of his or her official duties.*

- *Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will survive close public scrutiny*
- *Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws and policies established by the Federal Parliament, Ontario legislature, or the City Council.”*

The statements of principles are generally consistent with those of other jurisdictions and with the core definition of conflict of interest – ensuring that the public interest is protected and that public office is not used to further private interests.

While the trend in Canada and the U.S. at the federal level is to put in place a Code of Conduct for Elected Officials, it is a less common practice at the provincial/state or municipal level. In adopting the more comprehensive code of conduct approach as the umbrella for both statements of principal and conflict of interest rules governing their conduct and behaviour (as opposed to more traditional and narrow conflict of interest rules) Toronto is a forerunner in this regard.

Conflict of Interest Policy for City Employees

Prior to amalgamation, most of the former municipalities had some form of conflict of interest policy or code of conduct for their employees. In August 2000, a new Conflict of Interest policy was developed that harmonized and strengthened the elements of the former policies.

Under this new policy, City employees are expected to conduct themselves with personal integrity, ethics, honesty and diligence in performing their duties. Employees are required to support and advance the interest of the City and avoid

placing themselves in situations where their personal interests actually or potentially conflict with the interests of the City.

The policy defines a conflict of interest as:

“...a situation in which private interests or personal considerations may affect an employee’s judgment in acting in the best interest of the City of Toronto. It includes using an employee’s position, confidential information or corporate time, material or facilities for private gain or advancement or the expectation of private gain or advancement. A conflict may occur when an interest benefits any member of the employee’s family, friends, or business associates. The policy is clear that employees are not permitted to use their positions to give anyone special treatment that would advance their interests or the interest of any member of their family, friends or business associates”.

Particularly valuable and useful are the sample questions and answers in Appendix 1 of the policy that provide examples *“that do not exhaust the possibilities for conflict of interest, but they do identify obvious situations covered by the policy”*. In easy to understand language, this appendix provides a range of scenarios that could present themselves to a City employee. While some public sector organizations include illustrative examples, they are often not as clear or comprehensive as those provided by the City of Toronto. The following are examples:

“Special treatment:

Employees are not allowed to use their positions to give anyone special treatment that would advance their own interests or that of any member of the employee’s family, their friends or business associates.

Sample question: “A member of my family asked me to bring home an extra permit. I could get an extra permit because I work in the Permits Office, but won’t do that. Everyone has to follow the standard procedure for permit applications. Am I right?”

Answer: Yes, you are right. Bending the rules to favour a family member or friend would be a conflict of interest.

Receiving fees or gifts:

Employees may not accept gifts, money, discounts or favours including a benefit to family members, friends or business associates for doing work that the city pays them to do. The exceptions to this are promotional gifts or those of nominal value e.g., coffee mug or letter opener with the company’s logo or the occasional lunch.

Question: “What should I do if a client gives me a gift or some money to thank me for doing a good job?”

Answer: Politely refuse the gift or money. You could explain that while you appreciate the offer, accepting it would not be proper according to the city’s conflict of interest policy. Someone might interpret the gift as a bribe to get special treatment.

Outside work or business activities:

Employees may not engage in any outside work or business activity:

- a) that conflict with their duties as city employees;*
- b) which use their knowledge of confidential plans, projects or information about holdings of the corporation; and*

c) *that will, or is likely to, negatively influence or affect them in carrying out their duties as city employees*

Question: I am a buyer in the Purchasing & Materials Management Division and a friend who is bidding on a city contract has asked me to coach him on the preparation of his bid. Am I permitted to assist him?

Answer: No you cannot assist him even if you are not directly involved in the assessment of the contract on which he is bidding. Your knowledge of city contracts could lead to the perception that your friend would have an advantage over other bidders.

Question: I am a paramedic and I have been asked by an accredited institution to teach a course on CPR. I will be paid a fee for this course. Am I permitted to teach the course?

Answer: Yes, as long as you are not teaching individuals that you would normally be teaching as part of your job and do not wear a city uniform when teaching the course.

Question: I am a licensing enforcement officer and I own an adult entertainment establishment Is this a conflict of interest? What should I do?

Answer: This may well be a conflict. You must disclose this involvement in writing to your executive director or general manager.”

Categories of Conflict Rules: Elected Officials

The categories of rules contained in the members' Code of Conduct are for the most part consistent with those codified in other jurisdictions. The Code addresses the following areas:

- Statutory provisions regulating conduct

- Gifts and benefits.
- Confidential information.
- Use of City property, services and other resources.
- Election campaign work.
- Business relations.
- Conduct respecting current and prospective employment.
- Conduct at Council meetings.
- Conduct respecting staff.
- Conduct respecting lobbyists.
- Discreditable conduct.

The Code of Conduct also contains a useful schedule setting out the roles and responsibilities of the Council members and staff – its preamble stating *“Members of Council and Staff of the City are both servants of the public and they are indispensable to one another.”* It lists a number of expectations for the following:

- The Whole Council.
- The Mayor.
- Councillors Generally.
- Standing Committees as a Whole.
- Standing Committee Chairs.
- Council Members on Agencies, Boards and Commissions.
- Staff of the City.

In setting out these expectations, the Code reflects a values-based approach, rather than rules that are excessively prescriptive in detail, the expectation being

that Councillors will hold themselves to the highest standard of ethical conduct and exercise appropriate judgement if a conflict situation presents itself.

A good example of a rule where judgement is required is with respect to the acceptance of gifts and benefits. The rule states, *“No member shall accept a fee, advance, gift, or personal benefit that is connected directly or indirectly with the performance of his or her duties of office.”* Exceptions to the rule are stated in a likewise general manner leaving the onus on the member to determine the appropriateness of accepting the gift or personal benefit, i.e. *“such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol, custom, or social obligation”*. By way of contrast, in jurisdictions that provide for more definition, (e.g. the U.S. and Government of Canada) the legislation or policy would be more specific. For example:

- A prohibition on any gifts over a certain dollar value or, in the case of a gift above that value that cannot be reasonably refused (e.g. for reasons of protocol, etc.), the gift would become the property of the City.
- Any gift over a certain dollar value would have to be disclosed to the ethics/integrity commissioner, including a statement of the value of the gift and the circumstances under which it was received.

Categories of Rules: City Employees

As with the Code of Conduct for members of Council, the categories of rules for City employees are consistent with those found in other jurisdictions, i.e.

- Special treatment for themselves, family, friends, or business associates.
- Receiving fees or gifts.
- Outside work of business activities.
- Using City property.

- Confidential information.
- Financial interest.
- Guidelines for management and professional staff.
- Representing others.
- Appointments.
- Conduct respecting lobbyists.
- Requirement to report conflict of interest.

The City's Conflict of Interest policy for staff is not exhaustively prescriptive in terms of detailed accounts of prohibited behaviour. Consistent with the Canadian tradition, it relies on higher-level statements, such as:

- Employees may not accept gifts, money, discounts or favours for doing work the city pays them to do.
- Employees may not use City property or resources for non-work activities.
- Employees may not use or disclose confidential information.
- Employees with financial interests in organizations doing business with the City must not represent or advise the organization in such transactions.
- Employees conduct respecting lobbyists is consistent with the Code of Conduct for Councillors.
- Certain employees may not appear before Council where the employee is paid to appear or is involved in the issue or policy under consideration.
- Certain employees may not seek or accept appointment to a City committee or board, must disclose membership on other boards that deal with issues related to their work at the City and must declare conflicts of interest where appropriate; and
- Employees must report situations of conflict of interest.

As noted earlier, the City reflects best practice by appending sample questions and answers in Appendix 1 of the policy that provide examples “that do not exhaust the possibilities for conflict of interest, but they do identify obvious situations covered by the policy”.

Disclosure of Interests

At this time, the City of Toronto (as with other Ontario municipalities) does not require confidential or public disclosure of interests for its elected officials or employees. In this regard, Toronto relies on the protocol for disclosure outlined in the *Municipal Conflict of Interest Act* whereby a member must publicly withdraw from the proceedings when a conflict arises. As noted earlier in this report, the issue of mandatory disclosure of the interests of elected officials was a major feature in the mid-1990’s debate on revised municipal conflict of interest legislation.

Oversight

When Council approved the Code of Conduct for its members, it also created an Ethics Steering Committee to establish a process for enforcing the Code of Conduct and to be responsible for monitoring the implementation and effectiveness of the Code.

The Ethics Steering Committee is a special Committee of Council, as opposed to being a formal sub-committee of a Standing Committee. As such, it has a dual reporting relationship:

- It reports through the Administration Committee with respect to policy recommendations and the creation of protocols to deal with complaints.
- It reports directly to Council on any recommendation to engage an external investigation of a formal complaint involving non-compliance with the Code of Conduct.

The Committee may have up to five members, including the Mayor or the Deputy Mayor/Mayor's designate as chair, the Chair of the Administration Committee and the Chair of the Personnel Sub-committee. It is responsible for:

- Ensuring that policy matters contained in the Code of Conduct are adequate as guidelines for member conduct, as well as establishing any required new policies.
- Ensuring that Council establishes a required process to deal with any complaints or concerns regarding alleged non-compliance with the Code of Conduct by a member.
- Ensuring that the complaint process is followed and providing recommendations for any external investigation of alleged non-compliance with the Code of Conduct.

In mid-2002, the Ethics Steering Committee recommended the creation of an independent Integrity Commissioner to apply and administer the Code of Conduct. This represents a major, progressive step forward in the municipal administration of codes of conduct and conflict of interest policies in Ontario. As proposed, the Integrity Commissioner has been based on the current provincial rather than federal model in that it would operate at arm's length from Council and the Mayor's Office. The Commissioner would make independent recommendations to Council with respect to penalties or other corrective action in the event of infractions by individual members, with Council making the final decision with respect to any penalty – the same approach taken at the provincial level.

More specifically, the Commissioner would have responsibility for:

- Complaint assessment/investigation related to Council's Code of Conduct.
- Giving advice to members of Council on potential conflict of interest situations.
- Publishing an annual report on the findings of typical cases/inquiries.
- In cases where a member of Council has been found to be in violation of the Code of Conduct or other matter, recommending to Council that a penalty be imposed, with Council making the final decision with respect whether and what penalty will be enacted.

The intention is that this Commissioner would also oversee the proposed lobbyist registry.

Compared to other governments that have independent integrity commissioners, one responsibility that has not been included mandatory disclosure of interests under the Code of Conduct to the Commissioner (the most common approach in Canada being one of confidential disclosure). Council did not include this in its proposed approach, although the issue was raised at the time in staff analysis:

“Currently, Council Members do not have the financial and asset disclosure requirements of many other jurisdictions. This actually comprises the central, or sole, mandate of most Ethics Commissioners. The City of Toronto could introduce disclosure requirements for its Council members. This would strengthen justifying the establishment of an Ethics Integrity Commissioner for the City”.

As currently proposed, the creation of an Integrity Commissioner with the kinds of powers described above would require provincial enabling legislation, notably the kinds of investigatory and enforcement powers that the research indicates are critical for effectiveness. In this would be included the proposed exemption from

Freedom of Information requirements, the power to make legal decisions about contraventions being divided between Council and the Integrity Commissioner, and the power to conduct an inquiry and access information under oath.

As noted in the Toronto Computer Leasing Inquiry research paper *Lobbyist Registration Volume 3*, the City's ability to take action in this area is not entirely contingent on provincial legislation. It may be possible for worthwhile elements of the City's approach to be implemented, albeit without the extent of enforcement capacity that is ultimately required, including:

- Hiring an Integrity Commissioner that is focused on providing non-binding conflict of interest advice and interpretations for Councillors and City staff.
- Hiring someone to investigate Code of Conduct or other types of ethics policy infractions including violations of ethics related policies, i.e. code of conduct, lobbyist registration, etc. While this kind of investigation would not include the capacity to compel cooperation, there are many precedents within government, i.e. internal investigations into allegations of harassment or discrimination in the workplace.

Developing the Culture

As discussed in *Conflict of Interest Volume 1*, the importance of culture and values for guiding employee behaviour is strongly emphasized in the research. Organizations are recognizing that rules alone do not encourage employees to behave in an ethical manner.

It is clear from the research and interviews that in the wake of amalgamation, the City of Toronto had many priorities to address. The period following amalgamation was particularly challenging with the complexities of simultaneous

changes in governance, structure, processes, policy and personnel, as well as the need to ensure that public services were delivered effectively and efficiently.

At this time, senior City officials were also keenly aware of the different experiences, approaches, cultures, etc. of the various amalgamating cities. They recognized early on the importance of taking action to build a new, consolidated culture, including initiating formal discussions at the Commissioner level. By necessity, the initial emphasis was on policy development and consolidation with respect to new conflict of interest policies, including a substantial investment of time and effort to ensure that these policies were comprehensive and rigorous.

Since that time – and most notably in the past 18 months – the City has considerably intensified its efforts to consolidate and build a unified culture based on high ethical and public service standards through the Toronto Public Service Initiative.

This Initiative is a well-designed and articulated corporate organizational health and development project reporting directly to the CAO, the purpose of which is to build morale and develop the civil service. The Initiative focuses on excellence in public service and consolidates all corporate policies, documents, and initiatives that share the same values and principals. It is intended to reach out to all employees and to commend and challenge them to commit to excellence through stewardship and service.

The need for this initiative was evident from samplings of staff attitudes and morale. Significant challenges were identified with respect to individual perceptions of their own working conditions and the public service in general. As reported, a majority of City staff were experiencing feelings of being taken for granted or being unappreciated, high levels of stress, a general sense of powerlessness, and an overwhelming workload. The City's public service as a

whole was seen as lacking cohesion, being without direction, uniformed, chaotic, and in need of renewal.

The stated long-term vision of the initiative is the creation of “a strong culture, healthy climate and good morale”. Under the direction of the City administration’s senior management team and with the approval of Council and the personal stewardship of the CAO, the following three goals have been established to achieve this long-term vision:

1. *Develop a clear, Corporate Vision, Mission and Role statement that will become widely understood, referred to and practiced.*
2. *Create a single corporate improvement framework which will allow the corporation to:*
 - *Show an overall improvement plan*
 - *Link improvement strategies*
3. *Engage staff and Council in understanding the Corporate Mission, Role, and Improvement Strategy for the Corporation. By next year all management staff will understand the Council Vision and the Corporate Mission, Role and Improvement Strategy.*

As part of achieving these goals, City staff have developed a multi-year implementation strategy that incorporates both the theory and best practices of Change Management, including:

- A formal assessment of need as well as framework and goal development in 2002.
- A defined strategy approved by Council, the creation of a multi-disciplined project infrastructure in the CAO’s office, initial staff workshops/training sessions, information meetings and other communications tools such as videos and newsletters in 2003.

- The creation of champions, ongoing workshops and staff guides, additional public communication, and a major staff conference planned for 2004.

The CAO and other senior executives have and are expected to continue to be highly visible throughout the process. More recently, the new Mayor in one of his first acts in office wrote to all staff reinforcing the key messages of the Toronto Public Service Initiative and indicating his personal support for the direction (this was consistent with his earlier and, as indicated in interviews, very strong support for the initiative as the previous Chair of the Personnel Sub-Committee). These various actions on the part of senior City officials are consistent with the emphasis in the literature on senior management needing to be visible in demonstrating the organization's belief in ethical behaviour.

Part 4

Input and Recommendations

As indicated in the previous section, the City of Toronto has taken a leadership role in many areas related to ethics, including the Code of Conduct and conflict of interest policy development, the creation of the Ethics Steering Committee, the proposed Integrity Commissioner and lobbyist registry, and the Toronto Public Service Initiative. This is not to say that the City has a new, consolidated culture in place at the present – with any major amalgamation, the development of a consistent and mature culture based on high standards and expectations can take anywhere (depending on the expert consulted) from five to ten years. As reported in interviews, there continues to be the potential for this very large organization to have considerable variation in practice to occur with respect to interpretation of the rules, compliance and enforcement actions, as well the messaging about the importance of ethics in the workplace. In both word and deed, however, senior City officials have recognized the need for a clear vision, commonly understood and shared values that will guide behaviour, and have committed themselves to the rigour required to turn value statements into an operational reality.

Not surprisingly, in the internal and external interviews for this project, individuals expressed satisfaction with the progress and direction in which the City is moving and more specifically in the design and development of its conflict of interest policies. There is a sense that elected officials and administrative staff, particularly at the senior level, are very aware of and familiar with the content of the policies and their corresponding responsibilities. Many of those were very positive with respect to the work that had been done on the various more descriptive and example-based schedules attached to the Code and Conflict of Interest policies.

When asked, therefore, whether changes should be made in any aspects of the City's current approach, many individuals identified areas or issues that were not necessarily problems or shortcomings, but instead opportunities to push Toronto's leadership in this area to the next level of development.

The major themes that surfaced from interviews included the following:

- For the most part, it was felt that the categories of conflict for elected officials and non-elected officials were clear and inclusive enough to capture the range of conflicts that could surface. It was also noted that the policies were developed so as to be expandable and that subsequent categories could be introduced over time as required.
- The inclusion of case studies and descriptive examples was recognized as having been highly effective. It was suggested that this could be further strengthened, perhaps as part of the Toronto Public Service Initiative, by the expanding the number of case studies and creating additional descriptive examples based on real job situations. As reported in the interviews, some departments have already developed their own materials for use by the staff but not necessarily linked to the corporate direction in terms of key messages and interpretations.
- It was suggested that there is an opportunity to consolidate all of the policies that impact on or have implications for conflict of interest for Councillors in a single, easily accessible document, based on the current Code of Conduct. Examples of the areas that could be included are office expenses for Councillors and management of unsolicited proposals, typically from outside suppliers of goods and services. A similar opportunity was identified with respect to a consolidated approach for City employees, again perhaps in the form of a Code of Conduct.

- There was a general view that the next major leadership step for Council should be in the form of requiring confidential disclosure of interests to the proposed Integrity Commissioner. As noted earlier, this would clearly establish Toronto as leading municipality in North America and is also seen as something that would strengthen the City's case for enabling provincial legislation. It was acknowledged that this would not be a typical approach for an Ontario municipality, but that given Toronto's size, scope, and complexity, (5th largest municipal government in North America, and 6th largest government of all types in Canada) the appropriate comparator should more appropriately be the provincial/state level of government. It was also generally felt that a similar confidential approach would be appropriate for senior public servants, again positioning Toronto in the forefront.
- There is a sense that the current language and requirements with respect to the receipt of gifts and benefits for elected officials, while consistent with the approach in many other jurisdictions, is perhaps somewhat vague and that public perceptions of integrity would be enhanced by more definitive requirements in this particular area.
- There appeared to be a lack of clarity with respect to the Code of Conduct training offered to Councillors. Most were clear about training at the beginning of each term of office but less so with respect to ongoing training or development. There was a general sense that development in this area could be enhanced by more regular discussion between and among Councillors and also involving senior staff, including making more use of a real-life case study approach. Similar views were expressed with respect to employees and the benefit of having more ongoing training, perhaps as an integrated component of the Toronto Public Service Initiative. It was suggested that this should include a greater emphasis on

guidance to managers with respect to handling situations of real, potential and perceived conflict.

- It was noted that no mechanism currently exists to evaluate in an ongoing way the extent to which the policies (and ethics more generally) are uniformly applied, particularly with respect to interpretations, advice and disciplinary actions.

Recommendations

The follow recommendations reflect Toronto's high level of accomplishment in developing codes of conduct and conflict of interest policies, the design and implementation to date of the Toronto Public Service Strategy, and the stated intention of senior officials to continue to intensify their efforts in this area.

Reflecting the literature, best practices from other jurisdictions, and input from interviews, this section includes two major recommendations, relating to disclosure of interests and the creation of an ethics centre, as well as a number of secondary recommendations.

Disclosure of Interests

As noted in the previous section, disclosure of interests is generally seen as the next major step forward that Toronto Council could take in terms of ethics related policies and practices. Consistent with the City of Toronto's status as one of the largest governments in North America, and with the full-time nature of Councillor positions, this confidential disclosure should be modeled after federal and provincial examples.

In this regard, the recommended approach is that Council adopt a policy that provides for confidential disclosure of financial assets and contingent liabilities for Council members to the proposed Integrity Commissioner, the responsibilities and powers of which would be modified accordingly. Also, it would be necessary to make corresponding changes to the City's proposal to the provincial government for special legislation to create the Office of the Integrity Commissioner.

In addition, it is recommended that a similar policy of confidential disclosure be adopted for the Chief Administrative Officer and Commissioners, in recognition of their influential positions and their demonstrated commitment to the highest standards of real and perceived integrity.

For elected officials, the proposed City Integrity Commissioner would be responsible for reviewing confidential disclosure forms on a scheduled basis and providing advice and guidance to Councillors with respect to areas of apparent, potential, or real conflict.

As part of maintaining the important distinction between administrative and elected officials, a designated official in an *ethics centre of excellence* to be established in the CAO's Office (see the next set of recommendations with respect to *Continuing to Build an Ethical Culture*) would be responsible for reviewing the confidential disclosure forms of the CAO and Commissioners on a scheduled basis and providing advice and guidance with respect to areas of apparent, potential, or real conflict.

Continuing to Build an Ethical Organization

As noted earlier, the City has made considerable progress in its efforts to create a new, consolidated City culture based on high ethical and public service standards through the Toronto Public Service Initiative. To date, that Initiative has been based on best practice thinking and planning. The following recommendation, also based on best practices in organizational development and Change Management are intended to further strengthen what is already a very positive approach.

It is recommended that the administration create an *ethics centre of excellence* in the organization that would have a mandate to develop a comprehensive ethics program for the City and would have ongoing responsibility for developing and leading the implementation of future strategies and plans to enhance ethical behaviour in the City.

The centre would be responsible for:

- Developing a comprehensive and leading edge ethics training and management program that would emphasize fundamental principles and practical/illustrative examples of ethic-related situations (e.g. conflict of interest, lobbying, procurement, etc.) that might present themselves depending on the department, and how these should be approached and resolved. The program would include a specific component dedicated to executive development, including relevant case studies, materials, and courses. The training would be customized to meet the working environments and responsibilities of staff in different parts of the organization (e.g. reflecting the different circumstances of those working in corporate vs. those in front-line service delivery). The program would also include a component directed at ensuring individual Councillors have

a clear, consistent, and up-to-date understanding of the role and values of the Toronto Public Service Initiative and its accomplishments.

- Ensuring that a review of conflict of interest policy becomes part of the performance management and appraisal system for all levels of the organization, in addition to management. This would include the requirement that all staff review the policy with their superiors on an annual basis as part of creating ongoing awareness and more regularized and open process to discuss possible conflicts.
- Ensuring that ethical language and key messages demonstrating the City's commitment to high standards of ethical behaviour are incorporated into all City policy and procedure documents and City communications more generally.
- Creating an *ethics hotline* that would allow confidential disclosure and discussion of conflict of interest and other ethics-related issues by employees. Advice would be given to the employee about whether they were in conflict, to whom notification should be made, and a suggested course of action. This impartial hotline would supplement and support rather than replace the current process of disclosure to a superior.
- Developing a regular, on-line ethics information/interpretation bulletin and discussion forum that would provide updates on ethics initiatives, provide interpretive information in the form of real-life case studies and best practices, and an opportunity to publicize and celebrate successes.
- Developing a user-friendly, plain-language staff guidebook that includes the fundamental principles, information on formal policies and procedures, interpretive guidance, and practical examples of conflict situations. Where appropriate, these would be tailored to the different needs of staff in various parts of the organization.

- Ongoing professional liaison with recognized external organizations such as the Canadian Centre of Ethics, as well as individual experts, as part of building a broader network of support and remaining current on both theory and practice.
- Developing an annual public service week, as a citywide focus of professional development and an opportunity to celebrate achievements, receive input from recognized experts, receive feedback on key issues or areas of interest, and communicate plans for the future.

In addition, as noted in the previous set of recommendations dealing with disclosure of interests, a designated official in the *ethics centre of excellence* would be responsible for reviewing the confidential disclosure forms of Commissioners on a scheduled basis and providing giving advice and guidance with respect to areas of apparent, potential, or real conflict.

For the purposes of continuing to emphasize the importance of this direction and to drive change from the top, this centre would be part of the CAO's Office for the foreseeable future but ultimately would be a more formal part of the Human Resources function.

Secondary Recommendations

The following are a small number of secondary recommendations that emerged from the review of the literature, best practices, and expert input:

- As part of the proposed citywide ethics management program, that Council and senior administrative officials meet regularly on an informal and private basis (i.e. not a formal Council meeting) to discuss ethics and code of conduct issues, including the use of case studies.

- That other policies in place or under development that have an impact on or implications for conflict of interest for elected officials (for example, office expenses for Councillors, the process for dealing with unsolicited proposals) be referenced or included in the Code of Conduct for elected officials.
- That the current Conflict of Interest policy for City employees be incorporated into a broader and more comprehensive code of conduct for the public service and that this include all policies in place or under development that have an impact on or implications for conflict of interest for employees be included, e.g. policies on employee participation, post-employment restrictions, procurement.
- That the language contained in the Code of Conduct for members of Council with respect to gifts and benefits be clarified and made more transparent and specific. Based on practices in place in other jurisdictions, a reasonable approach – and, again, one that would further enhance Toronto’s leadership in this area – would be to adopt language that has been previously proposed by City staff:

“No member shall accept any gift or personal benefit exceeding \$200.00 in value that normally accompanies the responsibilities of office and is received as an incident of protocol, custom, or social obligations. Nor shall any member accept any gift or personal benefit where the total value received directly or indirectly from one source in any twelve-month period exceeds \$200.00. Any gift received over the \$200.00 limit for which it would be an insult to the donor to refuse even after explanation of the City policy, would automatically become a gift to the City and the property of the City as a whole as opposed to any individual member.”