

Consolidated Clause in Policy and Finance Committee Report 7, which was considered by City Council on September 25, 26 and 27, 2006.

26

Amendments to Code of Conduct for Members of Council

City Council on September 25, 26 and 27, 2006:

- (1) *adopted the following recommendations contained in the Recommendations Section of the report (September 21, 2006) from the Integrity Commissioner, subject the Code of Conduct in Appendix I being approved in principle:*

“It is recommended that:

- (1) *the proposed amendments to the Code of Conduct for Members of Council as set out in Appendix I be adopted, and except as specifically designated in that Code, come into force on the date of the coming into force of the City of Toronto Act, 2006;*
- (2) *the Code of Conduct for Members of Council apply to Council Members’ staff, and the City Manager, in consultation with the City Solicitor, the Executive Director for Human Resources and the Integrity Commissioner report to the Executive Committee on the steps required to implement this policy, including any recommendations for legislative amendments;*
- (3) *any contracts for staff of Members of Council entered into or renewed for the new term of Council include provisions that will require compliance with any applicable Code of Conduct as adopted by Council from time to time;*
- (4) *the Council Code of Conduct Complaint Protocol be extended to apply to complaints against members of local boards (restricted definition) as provided for in the City of Toronto Act, 2006;*
- (5) *the Council Code of Conduct Complaint Protocol include a provision that provides Council with authority to vary any penalty that the Integrity Commissioner has recommended for a violation of the Code of Conduct for Members of Council but not to refer the Integrity Commissioner’s recommendation other than back to the Integrity Commissioner;*
- (6) *the Integrity Commissioner prepare a report for the first meeting of the Executive Committee following the swearing in of the new Council on the ramifications of any changes in the Code of Conduct for Members of Council for the Council Code of Conduct Complaint Protocol;*

- (7) *the Integrity Commissioner, as part of the process culminating in the mandatory two year review of the City of Toronto Act, 2006, keep under review the scope of penalties for violations of the Code of Conduct and, in particular, those recommended by the Bellamy Commission that require specific legislative authority in that Act; and*
- (8) *the City urge the appropriate authorities within the provincial government to either modernize the Municipal Conflict of Interest Act or confer on the City of Toronto authority to create its own conflict of interest regime in place of or supplementary to that Act.”;*
- (2) *requested the City Manager to report to the Executive Committee in January 2007, for consideration by City Council in January 2007, on an ‘Appeal Mechanism’ and ‘Legal Support Program’ to be endorsed by City Council; upon Council’s approval of the Appeal Mechanism and Legal Support Program, the Code of Conduct shall come into effect;*
- (3) *directed that the Code of Conduct for Members of Council include, in principle, Conflict of Interest provisions, but exclude “apparent” Conflict of Interest provisions; and requested the Integrity Commissioner, in consultation with the City Solicitor, to report to the Executive Committee in the first quarter of 2007 on possible provisions; and*
- (4) *requested the Integrity Commissioner to:*
- (i) *report to the first meeting of City Council in January 2007:*
- (a) *on a more specific Councillors’ Disclosure Policy for assets and liabilities similar to the provincial and federal governments’ policies; and*
- (b) *providing an explanation on the difference between Councillors using their office budget rather than spending monies out of their own personal accounts, and elaborate on possible sanctions to Councillors who chose to pay for their own expenditures outside their allocated Councillors’ Global Office Budget; and*
- (ii) *monitor the impact of the changes to the Code of Conduct, evaluate whether other changes are necessary, and generally keep the Code of Conduct under review, and report to Council, through the appropriate successor Committee, no later than July 2007.*

This Clause, as amended, was adopted by City Council.

Council also considered additional material, which is noted at the end of this Clause.

The Policy and Finance Committee:

- (1) submits to Council, the communication (September 6, 2006) from the Bellamy Recommendations Steering Committee, for consideration with the forthcoming report from the Integrity Commissioner that was requested by the Steering Committee; and**
- (2) requested the Integrity Commissioner:**
 - (i) to report directly to Council for its meeting scheduled to be held on September 25, 2006, on the definition of “family members”; and**
 - (ii) to report early in 2007, on an appeal mechanism and legal assistance for Members of Council.**

The Policy and Finance Committee submits the communication (September 6, 2006) from the Bellamy Recommendations Steering Committee:

The Bellamy Recommendations Steering Committee on September 6, 2006:

- (I) requested the Integrity Commissioner to:**
 - (i) amend Section VII (b) contained in the Appendix by inserting the words “staff members” after the words “family members” so that Section VII (b) shall now read as follows:**
 - “(b) that affects a member of Council, his or her family members, staff members, friends or associates, business or otherwise as one of a broad class of persons, or”**
 - (ii) finalize his proposals for amendments to the Members Code of conduct in keeping with the recommendations arising from this Committee; after further consultation with the City Solicitor and report thereon directly to the September 18, 2006 meeting of the Policy and Finance Committee, or if necessary, directly to the September 25, 2006 City Council meeting; and**
 - (iii) report on amending the complaints protocol for the Code of Conduct to provide for clearer penalties and processes for violations to be recommended by the Integrity Commissioner to Council;**
- (II) referred the following motion to the Integrity Commissioner for report thereon to the Policy and Finance Committee for its meeting to be held on September 18, 2006, or the Council meeting to be held on September 25, 2006:**

Moved by Councillor LiPreti

“That the Integrity Commissioner be requested to:

- (i) amend Part III contained in the Appendix to provide that the value of gifts or benefits in any calendar year not exceed \$300; and
 - (ii) amend Part VIII by deleting the third paragraph;” and
- (III) received the report (July 5, 2006) from the Integrity Commissioner respecting Code of Conduct and Complaint Protocol.

Background:

The Bellamy Recommendations Steering Committee on September 6, 2006, considered the following reports:

- (i) (August 30, 2006) from the Integrity Commissioner making preliminary proposals for a revised Code of Conduct for Members of Council in line with the recommendations of the Bellamy Committee and the Integrity Commissioner.

Recommendation:

It is recommended that the Committee receive this report and provide further directions for revisions to the Code of Conduct for Members of Council; and

- (ii) (July 5, 2006) from the Integrity Commissioner advising that further to his report to the Steering Committee on May 8, 2006, submitting items on which he contemplates developing proposals for changes to the Code of Conduct for Members of Council (“Code of Conduct”) and its associated Council Code of Conduct Complaint Protocol (“Complaint Protocol”).

Councillor Janet Davis, Beaches-East York appeared before the Bellamy Recommendations Steering Committee.

(Report dated August 30, 2006, addressed to the
Bellamy Recommendations Steering Committee from
David Mullan, Integrity Commissioner)

Purpose:

This report makes preliminary proposals for a revised Code of Conduct for Members of Council in line with the recommendations of the Bellamy Committee and the Integrity Commissioner.

Financial Implications and Impact Statement:

Save to the extent that an expanded Code of Conduct and a requirement for disclosure statements for certain gifts and benefits will add to the Integrity Commissioner's responsibilities, there are no financial implications to this report. At this point, it is impossible to measure the actual impact on the workload of the Integrity Commissioner.

Recommendation:

It is recommended that the Committee receive this report and provide further directions for revisions to the Code of Conduct for Members of Council.

Background:

One of the three elements of the mandate of this Committee is to consider whether and to what extent the recommendations of the Bellamy Commission require revision of the Code of Conduct for Members of Council ("Code of Conduct"). That responsibility is now supplemented by the terms of the new *City of Toronto Act*. It requires the City to create Codes of Conduct for both members of Council and members of local boards (restricted definition). Over the two years of my time as Integrity Commissioner, I have also made a number of recommendations and suggestions to Council for improvements to and extensions of the Code of Conduct.

In previous reports to the Committee (dated May 8 and July 5, 2006), I outlined my sense of the issues that the Committee needed to address in revising the Code of Conduct. Now, in order to focus discussion of those issues, I have redrafted the Code of Conduct to reflect some of the directions in which the Committee might consider moving.

Comments:

While I have had the benefit of input from the City Manager's Office and the City Solicitor, the draft is my own responsibility and does not necessarily reflect the views of staff. Indeed, and I concede this, there are some elements to the revised version that may not pass legal muster in the sense of not being authorized under the *City of Toronto Act* or lacking precision.

More particularly, the provisions dealing with the application of the Code of Conduct to the staff of members of Council and the proposal for sanctions beyond those provided for in the *City of Toronto Act* may be beyond the legal capacity of Council. However, I have included them as they do represent an attempt to follow the recommendations of the Bellamy Commission.

That aside, the principal features of the draft revised Code of Conduct are as follows:

- (1) a new provision on use of influence;
- (2) a new provision on conflicts of interest and apparent conflicts of interest;
- (3) a new provision on reprisals and obstruction;

- (4) a revised provision on lobbying reflecting the provisions of the proposed Lobbyist Regulation By-law;
- (5) a revised provision on gifts and benefits (including a proposal for disclosure of the receipt of certain kinds of gifts); and
- (6) an extended provision which makes specific reference to penalties for violation.

Conclusions:

The revised Code of Conduct is a work in progress. The purpose of submitting it at this time is to enable the Committee to consider the draft and provide directions for the finalization of that work.

Contact:

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Appendix

Code of Conduct for Members of Council
City of Toronto

| Existing | Proposed |
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| <p>Preamble:</p> <p>Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. To this end, adoption of the Code of conduct for Members of Council is one of several initiatives being undertaken by the City of Toronto during its first term as a unified City. 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. the Code of Conduct supplements and is compatible with the laws governing the conduct of members.</p> | <p>Preamble:</p> <p>Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government. In turn, such standards will protect and maintain the City of Toronto's reputation and integrity.</p> <p>To these ends, during its first term as a unified city, the City of Toronto, as one of several initiatives, adopted a Code of Conduct for Members of Council. Section 157(1) of the <i>City of Toronto Act, 2006</i> now requires the city to establish codes</p> |

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| <p>The key statements of principle that underline this are as follows:</p> <ul style="list-style-type: none"> (i) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner; (2) no member of Council shall use the influence of their office for any purpose other than for the exercise of his or her official duties; (3) 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 bear close public scrutiny; and (4) 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. | <p>of conduct for Members of Council and of certain local boards of the city. In response to this requirement, the city has revised and updated the original Code of Conduct. It is intended to supplement and be compatible with the laws governing the conduct of members.</p> <p>The key statements of principle that underline the Code of Conduct are as follows:</p> <ul style="list-style-type: none"> (1) Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner; (2) Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, conflicts of interest, and perceptions of the same; (3) 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 bear close public scrutiny; and (3) 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. |
| <p>I. <u>Statutory Provisions Regulating Conduct:</u></p> <p>This Code of Conduct is consistent with the existing statutes governing the conduct of members. Four pieces of provincial legislation govern the conduct of members of Council:</p> | <p>I. <u>Statutory Provisions Regulating Conduct:</u></p> <p>This Code of Conduct operates along with and as a supplement to the existing statutes governing the conduct of members. Four pieces of provincial legislation govern the conduct of members of Council:</p> |

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| <p>(i) the <i>Municipal Act</i>, and the Council Procedural By-law passed under section 55 of that Act;</p> <p>(ii) the <i>Municipal Conflict of Interest Act</i>;</p> <p>(iii) the <i>Municipal Elections Act, 1996</i>;</p> <p>and</p> <p>(iv) the <i>Municipal Freedom of Information and Protection of Privacy Act</i>.</p> <p>The <i>Criminal Code</i> of Canada also governs the conduct of members of Council.</p> | <p>(i) the <i>City of Toronto Act</i>, and the Council Procedural By-law passed under section ?? of that Act;</p> <p>(ii) the <i>Municipal Conflict of Interest Act</i>;</p> <p>(iii) the <i>Municipal Elections Act, 1996</i>; and</p> <p>(iv) the <i>Municipal Freedom of Information and Protection of Privacy Act</i>.</p> <p>The <i>Criminal Code</i> of Canada also governs the conduct of members of Council.</p> |
| | <p><u>II. Application:</u></p> <p>This Code of Conduct applies to all members of Council (including the Mayor). [It also governs the activities of the staff of Members of Council, when acting in that capacity.]</p> <p>This Code of Conduct also applies, subject to any necessary (legal) modification, to members of local boards (restricted definition) as defined in Section 156 of the <i>City of Toronto Act, 2006</i> [and such other members of local boards as designated by Council.] (The provisions of the <i>Municipal Conflict of Interest Act</i> also apply to local boards, as defined in the Act, with decision-making power.)</p> |
| <p><u>II. Gifts and Benefits:</u></p> <p>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. One example would be that no member should act as a paid agent before Council, or a committee of Council, or any agency, board, or commission of the City. Another example would be that no member should refer third parties to a person, partnership, or corporation in exchange for payment or other personal benefit.</p> | <p><u>III. Gifts and Benefits:</u></p> <p>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, save as provided for under the exceptions listed below. For these purposes, a fee or advance paid to or a gift or benefit provided to a member's spouse, child, or parent that is connected directly or indirectly to the performance of the member's duties is deemed to be a gift to that member.</p> |

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| <p>Examples of exceptions to the non-acceptance of gifts or personal benefits by members in relation to their official duties are:</p> <ul style="list-style-type: none"> (i) compensation authorized by law; (ii) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol, custom or social obligation; (iii) a political contribution otherwise reported by law; (iv) services provided without compensation by persons volunteering their time; (v) suitable memento of a function honouring the member; (vi) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country; (vii) food and beverages consumed at banquets, receptions or similar events; and (ix) communication to the offices of a member, including subscriptions to newspapers and periodicals. | <p>Save in the case of lobbyists, the following are recognized as exceptions:</p> <ul style="list-style-type: none"> (a) compensation authorized by law; (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol [...] or social obligation; (c) a political contribution otherwise reported by law; (d) services provided without compensation by persons volunteering their time; (e) suitable memento of a function honouring the member; (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country; (g) food and beverages consumed at banquets, receptions or similar events, provided <ul style="list-style-type: none"> (1) Attendance serves a legitimate business purpose, (2) The person extending the invitation or a representative of the organization is in attendance, and (3) The value is reasonable and the invitations infrequent; and (h) communication to the offices of a member, including subscriptions to newspapers and periodicals. <p>[In the case of categories (b), (e), (g), and (h), if the value of the gift or benefit exceeds \$200 or if the total value received from any one source during the course of a calendar year exceeds \$200, the member shall within 30 days of receipt of the gift or reaching the</p> |

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| | <p>annual limit, file a disclosure statement with the Integrity Commissioner.</p> <p>The disclosure statement must indicate:</p> <ul style="list-style-type: none"> (i) the nature of the gift or benefit, (ii) its source and date of receipt, and (iii) the circumstances under which it was given or received. <p>Any disclosure statement will be a matter of public record.</p> <p>On receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, create a conflict between a private interest and the public duty of the Member. In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the Member to justify receipt of the gift or benefit. Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the member to return the gift or the value of any gift or benefit already consumed.</p> <p>Under no circumstances may a member accept a gift or benefit worth in excess of \$500 or gifts and benefits from once source during a calendar year in excess of \$500.]</p> |
| <p><u>III. Confidential Information:</u></p> <p>Confidential information includes information in the possession of the City which the City is either prohibited from disclosing, or is required to refuse to disclose, under the <i>Municipal Freedom of Information and Protection of Privacy Act</i>, (MFIPPA) or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information</p> | <p><u>IV. Confidential Information:</u></p> <p>Confidential information includes information in the possession of the City which the City is either prohibited from disclosing, or is required to refuse to disclose, under the <i>Municipal Freedom of Information and Protection of Privacy Act</i>, (MFIPPA) or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from third parties of a corporate, commercial, scientific or technical nature, information</p> |

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| <p>that is subject to solicitor-client privilege.</p> <p>The <i>Municipal Act</i> allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential. For the purposes of the Code of Conduct, “confidential information” also includes this type of information.</p> <p>No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form except when required by law or authorized by Council to do so.</p> <p>Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.</p> <p>Under the Procedural By-law (authorized under s. 55 of the <i>Municipal Act</i>), where a matter that has been discussed at an in-camera (closed) meeting remains confidential, no member shall disclose the content of the matter, or the substance of deliberations, of the in-camera meeting.</p> <p>The following are examples of the types of information that a member of Council must keep confidential:</p> <ul style="list-style-type: none"> (i) items under litigation, negotiation, or personnel matters; (ii) information that infringes on the rights of others (e.g., sources of complaints) | <p>that is personal, and information that is subject to solicitor-client privilege.</p> <p>The <i>Municipal Act</i> allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential. For the purposes of the Code of Conduct, “confidential information” also includes this type of information.</p> <p>No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form except when required by law or authorized by Council to do so.</p> <p>Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.</p> <p>Under the Procedural By-law (authorized under s. 55 of the <i>Municipal Act</i>), a matter that has been discussed at an in-camera (closed) meeting remains confidential. No member shall disclose the content of any such matter, or the substance of deliberations at an in-camera meeting until the Council or committee discusses the information at a meeting that was open to the public or releases the information to the public.</p> <p>The following are examples of the types of information that a member of Council must keep confidential:</p> <ul style="list-style-type: none"> (i) items under litigation, negotiation, or personnel matters; (ii) information that infringes on the rights of others (e.g., sources of |

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| <p>where the identity of a complainant is given in confidence);</p> <p>(iii) price schedules in contract tender or Request For Proposal submissions if so specified;</p> <p>(iv) information deemed to be “personal information” under the <i>Municipal Freedom of Information and Protection of Privacy Act</i>; and</p> <p>(v) statistical data required by law not to be released (e.g., certain census or assessment data).</p> | <p>complaints where the identity of a complainant is given in confidence);</p> <p>(iii) price schedules in contract tender or Request For Proposal submissions if so specified;</p> <p>(iv) information deemed to be “personal information” under the <i>Municipal Freedom of Information and Protection of Privacy Act</i>; and</p> <p>(v) statistical data required by law not to be released (e.g., certain census or assessment data).</p> |
| <p>IV. <u>Use of City Property, Services and Other Resources:</u></p> <p>No member of Council should use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, web sites, Council transportation delivery services and Councillor global budgets) for activities other than the business of the Corporation. Nor should any member obtain financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.</p> | <p>V.</p> |
| <p>V. <u>Election Campaign Work:</u></p> <p>Members are required to follow the provisions of the <i>Municipal Elections Act, 1996</i>. No member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters) for any election campaign or campaign related activities. No member shall undertake campaign-related activities on City</p> | <p>VI.</p> |

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| <p>property during regular working hours. No member shall use the services of persons during hours in which those persons receive any compensation from the City.</p> | |
| | <p>VII. <u>Improper Use of Influence:</u></p> <p>No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties. Examples of prohibited conduct include the use of one’s status as a member of Council to promote both within Council and elsewhere the private advantage of oneself, or one’s family members, friends or associates, business or otherwise. Also prohibited is the holding out of the prospect or promise of future advantage through a member’s supposed influence within Council in return for present actions or inaction.</p> <p>For the purposes of this provision, “private advantage” does not include a matter:</p> <ul style="list-style-type: none"> (a) that is of general application, (b) that affects a member of Council, his or her family members, friends or associates, business or otherwise as one of a broad class of persons, or (c) that concerns the remuneration or benefits of a Member of Council, his or her family members, friends or associates, business or otherwise. |
| | <p>VIII. <u>Conflicts of Interest and Apparent Conflicts of Interest:</u></p> <p>Members of Council are bound by the terms of the <i>Municipal Conflict of Interest Act</i>. This legislation regulates conflicts of interest arising out of direct and indirect pecuniary interests on the part of a member and her or his immediate family (parents, spouses, and children) in relation to matters coming before Council. The Act creates its own complaint</p> |

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| | <p>mechanism by way of application to a judge. It does not, however, exhaust the range of impermissible conflicts of interest.</p> <p>Involvement in matters before Council in which one's family (beyond a parent, spouse, or child), friends, and associates, business or otherwise have an interest may give rise to a conflict of interest. Employment by or membership in an outside organization may also create situations which are incompatible with a member's official duties. Other forms of preferential treatment or attempts to secure preferential treatment for family members, friends, or associates, business or otherwise can give rise to conflict of interest.</p> <p>It is also important that members of Council recognize that their status requires them to be beyond reproach in such matters and that they avoid situations giving rise to an apparent conflict of interest. An apparent conflict of interest is one where there could be a serious apprehension on the part of reasonably informed persons that a conflict of interest exists.</p> <p>In matters coming before Council (or a committee or City agency, board or commission) in which a member has a conflict of interest or there exists an apparent conflict of interest, that member should declare a conflict and refrain from participation in debate and voting. In other situations, such as requests for preferential treatment) the member should refrain from any involvement.</p> <p>For the purposes of this provision, "interest" does not include a matter:</p> <ul style="list-style-type: none">(a) that is of general application,(b) that affects a member of Council, his or her family members, friends or associates, business or otherwise as one of a broad class of persons, or |

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| | (c) that concerns the remuneration or benefits of a Member of Council, his or her family members, friends or associates, business or otherwise. |
| <p>VI. <u>Business Relations:</u></p> <p>No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the <i>Municipal Conflict of Interest Act</i>.</p> | <p>IX. <u>Business Relations:</u></p> <p>No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the <i>Municipal Conflict of Interest Act</i>. Nor shall a member refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.</p> |
| <p>VII. <u>Conduct Respecting Current and Prospective Employment:</u></p> <p>No member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the City.</p> | X. |
| <p>VIII. <u>Conduct at Council:</u></p> <p>Members shall conduct themselves with decorum at Council in accordance with the provisions of the Council Procedural By-law.</p> | XI. |
| <p>IX. <u>Conduct Respecting Staff:</u></p> <p>Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council approved budget, process or policy, to the appropriate Standing Committee.</p> <p>Under the direction of the Chief Administrative Officer, staff serves the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be</p> | XII. |

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| <p>respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council.</p> <p>Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the City.</p> <p>No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person’s duties, including the duty to disclose improper activity.</p> <p>In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles are captured in the Schedule to the Code of Conduct and include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.</p> | |
| <p>X. <u>Conduct Respecting Lobbyists:</u></p> <p>The term “Lobbyist” includes the following:</p> | <p>XIII. <u>Conduct Respecting Lobbyists:</u></p> <p>Lobbying is a permissible but regulated activity. In the City of Toronto, it is defined</p> |

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| <p>(i) “consultant lobbyist” means a person who, for payment, lobbies on behalf of a client and includes, but is not limited to, government relations consultants, lawyers, accountants, or other professional advisors who provide lobbying services for their clients;</p> <p>(ii) “corporate in-house lobbyists” means an employee of a corporation that carries on commercial activities for financial gain and who lobbies as a significant part of their duties;</p> <p>(iii) “organization in-house lobbyist” means an employee of a non-profit organization, when one or more employees lobby public office holders and where the accumulated lobbying activity of all such employees would constitute a significant part of the duties of one employee; and</p> <p>(iv) “volunteer lobbyist” means a person who lobbies without payment on behalf of an individual, corporation, or organization.</p> <p>Lobbying is usually defined as direct or indirect efforts to solicit member’s support and influence government decisions on behalf of another party or an organization, often away from public scrutiny. Lobbying activity is to be distinguished from routine constituency matters, or advice seeking by members of the public, or contacts by members or employees of government conducting official business. Lobbying is also distinguishable from matters that are the subject of Committee deputation, or other processes that are a matter of public record where individuals are named and their interest and organizational affiliation identified.</p> | <p>in terms of any communication between a paid lobbyist or an unpaid lobbyist representing a for profit entity and a public official (including a Member of Council) in respect of a broad range of subject matters.</p> <p>Members of Council are responsible for upholding the terms of the Lobbyist Regulation By-law (Lobbyist Registration and Lobbyists’ Code of Conduct) More particularly, members of Council should not engage in communications in respect of the list of subject matters contained in the Lobbyist Regulation By-law with a person who is not registered as required by that By-law. Members of Council should also not knowingly communicate with a registered lobbyist who is acting in violation of the Lobbyist Regulation By-law. In the event that a lobbyist is in violation of the Lobbyist Regulation By-law, members of Council should either refuse to deal with the lobbyist on those terms or, where appropriate, terminate the communication with the lobbyist forthwith, and communicate the violation or attempted violation to the Lobbyist Registrar.</p> |

| Existing | Proposed |
|---|--|
| <p>Members shall be vigilant in their duty to serve public interests when faced with lobbying activity. Members can use the following as a guide to assist in identifying whether they are being lobbied:</p> <ul style="list-style-type: none"> (i) During the past year, has the contact person attempted to influence you personally, for example, in any legislative or administrative action that would have benefited him or her or his or her employer financially? (ii) Does the contact person do business or seek to do business with the City? (iii) Is the contact person seeking to influence outcomes outside a public forum on a matter involving, for example, a license, permit or other entitlement for use currently pending before the City? (iv) Is the contact person a provincially or federally registered lobbyist employer or a client of a registered lobbyist? (Refer to the respective Web Sites) (v) Is the contact person a provincially or federally registered lobbyist or lobbying firm? (vi) Does the contact person fall within the definitions provided above? | |
| <p>XI. <u>Discreditable Conduct:</u></p> <p>All members of Council have a duty to treat members of the public, one another and staff fairly and to ensure that their work environment is free from discrimination and harassment. The Ontario Human Rights Code applies, as does the Human Rights, Harassment and Hate Activity Policy Framework adopted by Council at its meeting of December 16 and 17, 1998.</p> | <p>XIV. Discreditable Conduct:</p> <p>All members of Council have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The <i>Ontario Human Rights Code</i> applies, as does the Human Rights, Harassment and Hate Activity Policy Framework adopted by Council at its meeting of December 16 and 17, 1998.</p> |

| Existing | Proposed |
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| | <p>XV. Failure to Adhere to Council Policies:</p> <p>A number of the provisions of this Code of Conduct incorporate policies and procedures adopted by Council. More generally, members of Council are required to observe the terms of all policies established by City Council.</p> |
| | <p>XVI. <u>Reprisals and Obstruction</u>:</p> <p>Members of Council should respect the integrity of the Code of Conduct and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone with relevant information to provide the Integrity Commissioner is therefore prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, as, for example, by the destruction of documents or the erasing of electronic communications.</p> |
| <p>XII. <u>Applicability to Agencies, Boards, Commissions and Other Bodies</u>:</p> <p>[To be replaced by II. in proposed version.]</p> | |
| <p>XIII. <u>Compliance With the Code of Conduct</u>:</p> <p><i>(Refer to Note (2) on cover page of Code of Conduct)</i></p> <p>Members of Council are accountable to the public through the three-year election process. Between elections they may become disqualified and lose their seat if convicted of an offence under the <i>Criminal Code of Canada</i> or for failing to declare a conflict of personal interest under the <i>Municipal Conflict of Interest Act</i>, for example.</p> <p>This Code of Conduct is an agreement by members on their expected conduct. It is</p> | <p>XVII. Compliance With The Code Of Conduct:</p> <p>Members of Council are accountable to the public through the three-year election process. Between elections they may become disqualified and lose their seat if convicted of an offence under the <i>Criminal Code of Canada</i> or for failing to declare a conflict of personal interest under the <i>Municipal Conflict of Interest Act</i>, for example.</p> <p>In addition, section 160(5) of the <i>City of Toronto Act, 2006</i>, authorizes Council to impose either of two penalties on a member of Council or a local board (restricted</p> |

| Existing | Proposed |
|---|---|
| <p>adopted by confirmatory by-law, as opposed to a specific by-law with an offence provision (that could be enforced under the <i>Provincial Offences Act</i> and could result in a fine of up to \$5000.00). While they may not be prosecuted or fined under it, members acknowledge the importance of the principles contained in this Code of Conduct and agree to support and adhere to it.</p> <p>As the head of the Council, the Mayor has as one of his or her duties, to be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed. Complaints or concerns from any person regarding alleged non-compliance with the Code by a member may be made to the Mayor in writing.</p> | <p>definition) following a report by the Integrity Commissioner that in, her or his opinion, there has been a violation of the Code of Conduct:</p> <ul style="list-style-type: none"> (i) A reprimand. (ii) Suspension of the remuneration paid to the member in respect of his or her services as a member of council or the local board, as the case may be, for a period of up to 90 days. <p>[By confirmatory by-law, Council has also authorized the imposition of the following penalties on members of Council or a local board (restricted definition) whom the Integrity Commissioner has found in violation of the Code of Conduct:</p> <ul style="list-style-type: none"> (i) Removal from one or more Council meetings. (ii) Removal from membership of a Committee or local board (restricted definition). (iii) Removal as Chair of a Committee or local board (restricted definition). (iv) Removal from one or more Committee or local board (restricted definition) meetings. (v) Repayment or reimbursement of moneys received. (vi) Return of property or reimbursement therefore. (vii) A recommendation for an apology to Council and/or the complainant.] |

(Report dated July 5, 2006, addressed to the Members of Bellamy Recommendations Steering Committee from David Mullan, Integrity Commissioner, entitled “Code of Conduct and Complaint Protocol”)

Further to my report to the Committee of May 8, 2006, what follows are the items on which I contemplate developing proposals for changes to the Code of Conduct for Members of Council (“Code of Conduct”) and its associated Council Code of Conduct Complaint Protocol (“Complaint Protocol”):

(1) Jurisdiction:

- (a) Members of ABCs The Code of Conduct applies to members of ABCs (Clause XII). The Complaint Protocol does not give the Integrity Commissioner (“IC”) authority over members of ABCs. Section 159(1) of the *City of Toronto Act, 2006* (“the Act”) makes the IC responsible for the code of conduct applicable to “local boards (restricted definition)”. Both the Code of Conduct and the Complaint Protocol need to reflect the provisions of the Act.

Proposal: Bring back amendments attending to necessary changes.

- (b) Decorum at Council (a) While the Code of Conduct requires decorum of Members of Council at meetings of Council and Committees (Clause VIII), policing decorum at the moment is the sole responsibility of the Chair. This issue is part of the Procedural By-law revision process. I have recommended that primary responsibility for maintaining order remain with the Chair (Speaker) but that Council and/or the Chair/Speaker have authority to refer such issues to the IC for report to Council and recommendation for sanction. (b) I have also taken the position that, notwithstanding the usual role of the Chair, deputants before Standing Committees and Community Councils do have the right to complain to the IC against Councillors for not treating them appropriately during a deputation. This should be made explicit in the Complaint Protocol.

Proposal: (a) Consult with Committee revising procedural by-law
(b) Consult with Committee revising procedural by-law

- (c) Staff (including political staff) The Bellamy Commission Report (“Bellamy”) recommends extending the IC’s jurisdiction to include complaints against members of staff (Recs. 41-48). In providing for the office of IC, the Act does not mention jurisdiction over staff; only Members of Council and local boards (restricted definition). There is a legal question whether the City acting under its general powers could extend the IC’s jurisdiction to cover members of staff. There is also the question whether it is in fact appropriate to move in that direction. Because complaints against Members of Council often implicate members of their personal or political staff, there is certainly an argument to be made for extending the IC’s jurisdiction to cover them.

Proposal: Further study in light of Committee discussion and opinion from City Solicitor

(2) Offences:

(I) New:

- (a) Abuse of Influence; Failure to Adhere to Council Policies; Conduct in Relation to Private Affairs The statements of principle in the Code of Conduct are not part of the body of the Code of Conduct and therefore do not provide a basis for complaints against Members of Council. That should be changed. The Code of Conduct should have an abuse of influence provision and a clause making it an offence to disregard Council policies. Consideration should be given to whether Clause XI (“Discreditable Conduct”) should ever extend to Members of Council in their “private” capacities. The Code of Conduct should not include a provision making it an offence to fail to serve one’s constituents in “a conscientious and diligent manner”.

Proposal: Abuse of influence – Bring back amendments making necessary change

Failure to adhere to council policies – Bring back amendments making necessary change

Conduct in private capacity – Further study in light of Committee discussion

Serving in conscientious and diligent manner – No action; leave in preamble

- (b) Conflict of Interest and Perceptions of Conflict of Interest Clauses I and XIII of the Code of Conduct make it clear that Members of Council are bound by the *Municipal Conflict of Interest Act*. However, these provisions and the Complaint Protocol are equally clear that the IC has no jurisdiction over complaints of conflict of interest in violation of that Act. The procedure provided for under that Act must be followed. However, that Act is limited to direct and indirect pecuniary interests on the part of the Councillor and a narrow band of relatives. Bellamy recommends that conflict of interest (and perceptions of conflict of interest) in a much broader sense become part of any Code of Conduct (Recs. 20-22). She also provides examples (Recs. 23-30) of conflict of interest and preferential treatment in this broader sense (e.g., appearing to favour the interests of family, friends and business associates). The Code of Conduct should include a provision about conflicts of interest (including apparent conflicts of interest) though, at this stage, that probably should not include those traditional conflicts governed by the *Municipal Conflict of Interest Act* – that raises questions of Council’s legal capacity.

Proposal: Further study in light of Committee discussion

- (c) Procurement and Planning There are Council policies which set limits on the extent to which Members of Council are permitted to be involved in procurement and planning matters. Bellamy makes strong recommendations with respect to Members of Council involvement in procurement. If I.a is adopted and it becomes an offence to violate Council policies, in one sense, both planning and procurement will have been taken care of. However, there is a question whether, because these are two domains where ethical standards are so critical, they should have their own specific provision or provisions in the Code of Conduct.

Proposal: Further study in light of Committee discussion

- (d) Involvement in a Ward Matter in Another Member's Ward I have recommended that this be permitted but carefully regulated. Should the regulation be part of the Code of Conduct? If not, and it is dealt with by way of specific policy, should the violation of that policy also be highlighted by way of specific provision in the Code of Conduct or left to be dealt with under the general violation of Council policy provision?

Proposal: Further study in light of Committee discussion

- (e) Retaliation and Obstruction The Code should contain an express provision making it an offence to retaliate in any way against someone for filing a complaint with the IC and also to obstruct someone in the filing of a complaint or the IC in the performance of his duties. Bellamy (Rec. 43) deals specifically with the latter recommending that the sanctions for withholding cooperation be the same as those for the violation of the other substantive provisions of the Code of Conduct.

Proposal: Bring back amendments adding necessary provision

(II) Modifications to Existing Provisions:

- (a) Gifts and Benefits Clause II covering gifts and benefits should be tightened. Among other changes, even permissible gifts and benefits above a certain amount should have to be reported to the IC (e.g. any over \$500 or more than \$500 from any one source in a particular year). Gifts over a certain amount should be impermissible. Members of Council should have a duty to clarify whether a gift is a personal one or one to the CITY. The exemption for gifts accepted as an incident of "custom" should be removed.

Proposal: Further study in light of Committee discussion

- (b) Lobbying Clause X of the Code of Conduct (Conduct Respecting Lobbyists) will need to be amended to reflect whatever standards of conduct the Committee recommends with respect to Member of Council interaction with lobbyists in general and unregistered lobbyists in particular.

Proposal: Await finalization of Committee's work on lobbyist registry

- (c) Discreditable Conduct Clause XI of the Code of Conduct (Discreditable Conduct) should be amended to substitute the following for the word “fairly”: “appropriately and without abuse, bullying or intimidation” (Bellamy, Rec. 18). “Fairly” invites complaints about the substance of Councillors’ positions on issues and the choice of one constituent’s interests over another. Such complaints are not properly part of an integrity regime and belong more appropriately to the Ombudsman created by the new Act.

Proposal: Further study in light of Committee’s discussion

(3) Sanctions:

Section 160(5) of the new Act permits Council to impose two sanctions on a Member who has violated the Code of Conduct: a reprimand or suspension of remuneration for a period of up to 90 days. Bellamy (Rec. 46) supported a wider range of sanctions including “public reprimands, public apologies, expulsion from one or more committee meetings, removal from committee posts or committee chair positions, expulsion from one or more Council meetings, or, at the high end of the spectrum, a fine or a declaration of a vacancy in the councillor’s seat.” To this list, one could add repayment or reimbursement of money and return of property in kind or in money. Once again, however, there is a legal question whether the general powers of Council under the Act permit expansion of the list of sanctions. In any event, the Code of Conduct or the Complaint Protocol should contain a provision repeating the possible sanctions.

Proposal: Further study in light of Committee’s discussion and opinion from City Solicitor.

(4) Procedure:

- (a) Continuing Jurisdiction over Withdrawn Complaints The IC loses jurisdiction when a complaint is withdrawn. There should be discretion to continue to investigate. This is necessary to guard against situations where there may have been inappropriate pressure or inducements offered for the withdrawal and also where there is an overarching public interest that the investigation should proceed to a conclusion.

Proposal: Further study in light of Committee’s discussion

- (b) Anonymous Complaints Bellamy recommends (Rec. 41) that the IC be entitled to take anonymous complaints. The Auditor General currently does this through the Fraud and Waste Hotline. I am somewhat reluctant to move in that direction though a possible compromise may be to provide that, in exceptional cases, the IC can commence an investigation on her or his own initiative.

Proposal: Further study in light of Committee’s discussion

- (c) Affidavit Linked to the recommendation about anonymous complaints is a further recommendation that the Complaint Protocol's requirement that a complaint be commenced by formal affidavit be eliminated. In approving changes recently to the Complaint Protocol, Council in fact strengthened the affidavit requirement by requiring that it contain a warning as to the consequences of swearing a false affidavit. This was to meet concerns about the making of vexatious, frivolous or bad faith complaints, an issue that also concerned Bellamy (Rec. 44). To the extent that formality discourages that kind of complaint, I am reluctant to remove the affidavit as a requirement.

Proposal: Further study in light of Committee's discussion

- (d) Other Complaint Mechanisms Clause 2(3) of the Formal Complaint Procedure of the Complaint Protocol makes it clear that the IC must yield to other complaint mechanisms both external to the City (the Courts, the *Municipal Conflict of Interest Act*) and internal to the City (e.g., Director, Corporate Access and Privacy, with respect to violations of Clause III – breaches of the *Municipal Freedom of Information and Protection of Privacy Act*). Ceding to internal complaint mechanisms raises a number of questions. If the other complaint mechanism finds a violation of the Code of Conduct, by what process does this come to the attention of Council and how do the Act's sanction provisions get triggered? There has also been some suggestion that the IC should replace at least one internal mechanism – the use of an external consultant in cases involving staff complaints of *Ontario Human Rights Code* and other non-Code discrimination and harassment against Members of Council (Clause XI of the Code of Conduct).

Proposal: Further study in light of Committee's discussion and consultation with City Manager, City Solicitor, and Human Resources over issue of staff complaints of discrimination and harassment.

(5) Miscellaneous:

Clause XIII of the Code of Conduct specifies the Mayor as the person to whom written complaints of violation should be directed. I assume that has been overtaken by the provisions of the Complaint Protocol and should be removed.

Proposal: Bring back amendments making adjustment to text of Code of Conduct

(6) Summary of Proposals:

- (a) Bring back amendments attending to necessary changes to Code of Conduct
- (i) Jurisdiction over ABCs;
 - (ii) Inclusion of provision on abuse of influence;
 - (iii) Inclusion of provision on failure to adhere to Council policies;
 - (iv) Inclusion of provision on retaliation and obstruction; and
 - (v) Removal of part making reference to written complaint to Mayor.

- (b) Further study in light of Committee discussion
 - (i) Jurisdiction over staff (including political staff);
 - (ii) Inclusion of provision on conflict of interest (and perceptions thereof);
 - (iii) Inclusion of provisions on inappropriate involvement in procurement and planning;
 - (iv) Inclusion of provision on involvement in Ward matter in another member's Ward;
 - (v) Revision of gifts and benefits rule;
 - (vi) Revision of discreditable conduct rule;
 - (vii) Jurisdiction over withdrawn complaints;
 - (viii) Permitting anonymous complaints; and
 - (ix) Removal of requirement that complaints be commenced by way of affidavit.

- (c) Consultation with Others:
 - (i) Jurisdiction over decorum at Council – Committee revising procedural by-law;
 - (ii) Jurisdiction over behaviour towards deputants at Community Councils and Standing Committees – Committee revising procedural by-law;
 - (iii) Jurisdiction over staff (including political staff) – City Solicitor;
 - (iv) Sanctions – City Solicitor; and
 - (v) Jurisdiction over discrimination and harassment complaints by staff – City Manager, City Solicitor, Human Resources.

- (d) Miscellaneous:
 - (i) Provision on serving in conscientious and diligent manner – No change; and
 - (ii) Provision on lobbying – await finalization of Committee's work on this part of mandate.

Contact:

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Councillor Janet Davis, Beaches-East York, addressed the Policy and Finance Committee.

City Council – September 25, 26 and 27, 2006

Council also considered the following:

- *Report (September 21, 2006) from the Integrity Commissioner [Communication 21(a)]:*

Subject: Amendments to Code of Conduct for Members of Council

Purpose:

This report makes proposals for revising the Code of Conduct for Members of Council reflecting the recommendations of the Bellamy Commission and the experience of the Integrity Commissioner.

Financial Implications and Impact Statement:

Save to the extent that an expanded Code of Conduct for Members of Council and a requirement for disclosure statements for certain gifts and benefits will add to the Integrity Commissioner's responsibilities, there are no financial implications to this report. At this point, it is impossible to measure the actual impact on the workload of the Integrity Commissioner.

Recommendations:

It is recommended that:

- (1) the proposed amendments to the Code of Conduct for Members of Council as set out in Appendix I be adopted, and except as specifically designated in that Code, come into force on the date of the coming into force of the City of Toronto Act, 2006;*
- (2) the Code of Conduct for Members of Council apply to Council members' staff and the City Manager, in consultation with the City Solicitor, the Executive Director for Human Resources and the Integrity Commissioner report to the Executive Committee on the steps required to implement this policy, including any recommendations for legislative amendments;*
- (3) any contracts for staff of members of Council entered into or renewed for the new term of Council include provisions that will require compliance with any applicable Code of Conduct as adopted by Council from time to time;*
- (4) the Council Code of Conduct Complaint Protocol be extended to apply to complaints against members of local boards (restricted definition) as provided for in the City of Toronto Act, 2006;*
- (5) the Council Code of Conduct Complaint Protocol include a provision that provides Council with authority to vary any penalty that the Integrity Commissioner has recommended for a violation of the Code of Conduct for Members of Council but not to refer the Integrity Commissioner's recommendation other than back to the Integrity Commissioner;*

- (6) *the Integrity Commissioner prepare a report for the first meeting of the Executive Committee following the swearing in of the new Council on the ramifications of any changes in the Code of Conduct for Members of Council for the Council Code of Conduct Complaint Protocol;*
- (7) *the Integrity Commissioner, as part of the process culminating in the mandatory two year review of the City of Toronto Act, 2006, keep under review the scope of penalties for violations of the Code of Conduct and, in particular, those recommended by the Bellamy Commission that require specific legislative authority in that Act; and*
- (8) *the City urge the appropriate authorities within the provincial government to either modernize the Municipal Conflict of Interest Act or confer on the City of Toronto authority to create its own conflict of interest regime in place of or supplementary to that Act.*

Background:

One of the three elements of the mandate of the Bellamy Recommendations Steering Committee (“Steering Committee”) was to consider whether and to what extent the recommendations of the Bellamy Commission required revision of the Code of Conduct for Members of Council (“Code of Conduct”). In addition, at its meeting of April 25, 26, and 27, 2006, City Council referred to the Steering Committee a request that any amendments to the Code of Conduct “take the fullest advantage of the penalty provisions of Bill 53”. As well, at its meeting of May 23, 24, and 25, 2006, Council referred to the Steering Committee a request that it consider expanding the jurisdiction of the Integrity Commissioner under the Council Code of Conduct Complaint Protocol to include citizen members of agencies, boards and commissions.

Those responsibilities were supplemented by the terms of the City of Toronto Act, 2006. It requires the City to create Codes of Conduct for both members of Council and members of local boards (restricted definition). Over my two years as Integrity Commissioner, I have also made a number of recommendations and suggestions to City Council for improvements to and extensions of the Code of Conduct.

In three reports to the Steering Committee (dated May 8, July 5, and August 30, 2006, attached as Appendices II-IV), I outlined my sense of the issues that the Steering Committee needed to address in revising the Code of Conduct. In the August 30, 2006 report, I also appended a proposed draft of a revised Code of Conduct.

At its meeting of September 6, 2006, the Steering Committee considered my recommendations, and adopted the following motions:

The Bellamy Recommendations Steering Committee:

- (I) *requested the Integrity Commissioner to:*
 - (i) *amend Section VIII (b) contained in the Appendix by inserting the words “staff members” after the words “family members” so that Section VIII (b) shall now read as follows:*

- “(b) that affects a member of Council, his or her family members, staff members, friends or associates, business or otherwise as one of a broad class of persons, or”
- (ii) finalize his proposals for amendments to the Members Code of conduct in keeping with the recommendations arising from this Committee; after further consultation with the City Solicitor and report thereon directly to the September 18, 2006 meeting of the Policy and Finance Committee, or if necessary, directly to the September 25, 2006 City Council meeting;
- (iii) report on amending the complaints protocol for the Code of Conduct to provide for clearer penalties and processes for violations to be recommended by the Integrity Commissioner to Council;
- (II) referred the following motion to the Integrity Commissioner for report thereon to the Policy and Finance Committee for its meeting to be held on September 18, 2006 or the Council meeting to be held on September 25, 2006:

Moved by Councillor LiPreti

“That the Integrity Commissioner be requested to:

- (i) amend Part III contained in the Appendix to provide that the value of gifts or benefits in any calendar year not exceed \$300; and
- (ii) amend Part VIII by deleting the third paragraph;...”.

Subsequently, the Policy and Finance Committee, at its meeting of September 18, 2006, requested the Integrity Commissioner to report directly to Council at its September 25, 2006 meeting on the definition of “family member” as used in any revised Code of Conduct. As well, the Policy and Finance Committee requested the Integrity Commissioner to report early in 2007 on an appeal mechanism and legal assistance for members of Council.

Comments:

In developing the proposals for revision of the Code of Conduct, I took as a starting point the recommendations of the Bellamy Commission and made a presumption in favour of incorporating those recommendations where feasible. I also drew upon my own experience working with the existing Code of Conduct over a period of two years. As mentioned above, some of that experience is reflected in various reports that I have made to City Council. The report has also been developed in consultation with the City Solicitor. As a result of that collaboration and the advice of the City Solicitor that some of my original proposals were vulnerable legally, I have modified the recommendations that I made to the Steering Committee. This report also reflects changes made in response to the concerns of that Committee as well as the Policy and Finance Committee.

A number of the recommended changes are of a comparatively minor nature. Their aim is to “tidy up” the Code of Conduct by substituting clearer language, restructuring, and updating references to other statutory material and background.

Substantively, the principal recommendations for change are as follows:

Application of the Code of Conduct

This provision replaces, updates, and adds to Part XII of the existing Code of Conduct and responds to the dictates of section 157 of the City of Toronto Act, 2006.

The existing Code of Conduct applies to City Council appointees and other representative members of City agencies, boards, commissions, and other bodies. Now, section 157 of the City of Toronto Act requires the City to have a Code of Conduct for members of “local boards (restricted definition)”. The new provision substitutes that language for the existing terminology.

What remains to be done, however, is an amendment to the Council Code of Conduct Complaint Protocol (“Complaint Protocol”) to make it clear that the jurisdiction of the Integrity Commissioner extends to members of local boards to which the Code of Conduct applies. The existing Complaint Protocol does not, and City Council directed the Steering Committee to considering extending its application to members of agencies, boards and commissions. Should City Council adopt a revised Code of Conduct at its September meeting, it is my intention to bring forward a further report making recommendations for changes (including this matter) to the Complaint Protocol.

In my report to the Steering Committee, I also recommended that the application of the Code of Conduct extend to the staff of members of Council. This was in line with Recommendation 5 of the Bellamy Commission Report. The Conflict of Interest Act that forms part of Bill C-2, the Federal Accountability Act, currently before the Parliament of Canada, will also bind political staff. As well, this reflected my experience in that complaints against members of Council will sometimes implicate their staff and it is difficult to segment my investigation in such a way as to avoid inquiring into the conduct of staff.

At present, members’ staff are bound by the general staff Conflict of Interest Policy, approved by City Council on August 4, 2000 and Supplementary Guidelines, approved by the Audit Committee on January 17, 2005. The effect of including political staff within the ambit of the Code of Conduct would be to subject them to that Code rather than the staff Conflict of Interest Policy when acting on behalf of a member in matters covered by the Code of Conduct.

However, the City Solicitor has advised that the code of conduct provisions in Part V of the City of Toronto Act, 2006 (including rights of investigation, exemptions from the Municipal Freedom of Information and Protection of Personal information Act and other procedural safeguards) will only apply to a code of conduct for members of Council and the members of local boards (restricted definition). Legislative amendments would be required to have the same provisions apply to a code of conduct for Council members’ staff.

In the interim Council could still adopt a policy that staff of members of Council, when acting in that capacity, comply with the code of conduct for members of Council, with necessary changes.

It is recommended that the City Manager, in consultation with the City Solicitor, Executive Director for Human Resources and Integrity Commissioner report back on the steps to be taken to implement this policy. This report should include comments on the following matters:

- (a) the form of the code of conduct applicable to staff of members of Council;*
- (b) if any provision of the employee conflict of interest policy should continue to apply to Council member's staff;*
- (c) the form of a complaint protocol including the City official to be responsible for monitoring its effect;*
- (d) what penalties or other enforcement actions would apply; and*
- (e) what legislative amendments should be requested.*

It is also recommended that any contracts for staff of members of Council entered into or renewed for the new term of Council, include provisions that will require compliance with any applicable code of conduct as adopted by Council from time to time.

Gifts and Benefits

In each of my general reports (interim and annual) to Council on the work of my office, I have commented adversely on the existing version of the provision on gifts and benefits. In short, it seemed to me that it was too generous in the extent to which it allowed members of Council to accept gifts and benefits. Its language also lacked precision and, as a result, did not provide clear guidance. I also suggested that it might usefully contain some reference to monetary limits.

Recommendations 61 and 62 of the Bellamy Commission Report also called for a more restrictive gifts and benefits regime. As well, it recommended (Recommendations 66 and 67) the creation of a gifts registry. This latter recommendation was in line with the provisions of conflict of interest and ethics codes of most parliamentary jurisdictions in Canada.

The proposed revised rule builds on these recommendations, concerns and precedents.

The structure of the revised provision is as follows:

- 1. As at present, there is a general ban on the acceptance of gifts and benefits connected directly or indirectly with the performance of a member's responsibilities.*
- 2. Also, as at present, there is list of exceptions. (That list is not as extensive as that in the existing Code of Conduct.)*
- 3. Members must, as a matter of public record, report receipt of gifts and benefits coming within the permissible list of exceptions if individually they are above a certain value or, if from any one source, exceed that value in any calendar year.*

4. *Even within the range of permissible gifts that must be reported, there is an upper limit on the value of any one gift and the value of gifts that can be accepted from any one source in a calendar year.*
5. *The Integrity Commissioner is given authority to inquire into the appropriateness of any gift or benefit that appears on a disclosure statement.*

Elements 3-5 are new. In addition, the following are features of the new rule:

1. *For the purposes of the rule, gifts or benefits provided to a member's immediate family or staff are attributed to the member. This is in line with the rules applicable in most parliamentary codes of conduct or ethics across the country. For these purposes and indeed throughout the Code of Conduct, immediate family means children, parents and spouses as defined in the Municipal Conflict of Interest Act.*
2. *Except in the case of political contributions, the exceptions do not apply in the case of lobbyists. In other words, other than contributing to a member's political campaign, lobbyists cannot make any gifts or provide benefits to a member or the member's immediate family or staff that are connected directly or indirectly with the member's performance of his or her duties. This responds to the strong recommendations of the Bellamy Commission report (Recommendations 61-62). Indeed, Bellamy would allow no exceptions to this. However, a ban on political campaign contributions by lobbyists would violate the Municipal Elections Act and does not come within the ambit of the City's authority under the City of Toronto Act, 2006.*
3. *Among the list of exceptions, the receipt of gifts and benefits received "as an incident of...custom" has been removed. This provided an excuse for the perpetuation of inappropriate gifts and benefits on the basis of precedent.*
4. *In line with the existing regime for Members of Parliament, the circumstances under which members of Council may accept hospitality in the form of refreshments have been tightened.*
5. *While the Bellamy Commission recommended (Recommendation 61) that the rule restrict permissible gifts to those having a "nominal" value, it left the definition of what constituted a nominal gift to the Integrity Commissioner. In fact, to adopt such a rule would be to impose on members of Council and their immediate family and staff, a regime that is considerably more restrictive than any other at the parliamentary level in Canada. I am therefore proposing a regime that would allow permissible gifts to have more than what most people would regard as a nominal value but to require reporting above a certain value and a cap at \$500 (save in the case of hospitality provided out of Canada by other governments). Across Canada in parliamentary regimes, the obligation to report permissible gifts varies between \$150 and \$500. My initial recommendation was that the City of Toronto's reporting threshold should be \$200 but the Standing Committee asked me to consider modifying it to \$300 and I was prepared to do that.*

6. *The Integrity Commissioner will have responsibility for administering the reporting system, and the reporting requirements virtually parallel those recommended by the Bellamy Commission (Recommendation 67).*
7. *If the Integrity Commissioner determines that a reported gift or benefit was accepted inappropriately, he or she can direct that it or its value (in the case of consumed gifts or benefits) be returned to the donor or forfeited to the City.*

Confidential Information

I am recommending an addition to the existing provision on confidential information to reflect Recommendation 27 of the Bellamy Commission. The City has rules and policies about access to information. Some of those rules and policies are dictated by the terms of the Municipal Freedom of Information and Protection of Privacy Act. Some of them are the result of policy decisions taken by Council. The effect is that there is certain information in the possession of the City to which members of Council do not have access or unrestricted access. More generally, members of Council should have a legitimate business reason for wanting access to information that the City's rules and policies treat as confidential. That is the gist of the Bellamy Commission recommendation and the addition to the confidentiality provision of the Code of Conduct incorporates both of those principles.

Improper Use of Influence

In the existing Code of Conduct, improper use of influence is dealt with in the Preamble as one of "key statements of principle". These key statements of principle do not form part of the substantive body of the Code of Conduct. In other words, they do not constitute free-standing Code of Conduct obligations; they simply aid in the interpretation of the substantive provisions of the Code.

While some of the substantive provisions of the Code of Conduct involve what might be viewed as examples of improper use of influence, any Code of Conduct should contain a specific improper use of influence provision. This section achieves that objective. The exceptions draw on terminology found in members' codes of conduct at the parliamentary level across the country.

Conduct Respecting Lobbyists

This provision will operate in tandem with the proposed Lobbyist Regulation By-law. That by-law's provisions speak to the obligations of lobbyists to register and to observe the terms of their code of conduct. They do not address the conduct of members of Council in their relations with lobbyists. This provision fills that gap and imposes duties on members of Council not to implicate themselves with those in breach of the Lobbyist Regulation By-law.

Because the Lobbyist Regulation By-law will not become operative until some time in the term of the new Council, the operation of this amendment to the Code of Conduct should be postponed. In the meantime, the existing provision should continue to apply.

Discreditable Conduct

One of the most problematic aspects of the current version of this provision is the obligation that it places on members of Council to treat each other, staff, and members of the public “fairly”. Those contacting my office and indeed some complainants interpret this term as authorizing the Integrity Commissioner to revisit the stand that a member has taken on a particular issue involving them or a decision by a member of Council not to take up a particular matter. It is frequently difficult to explain that these actions by members of Council do not raise issues of ethics and integrity and that that is not what “fairly” means in existing Part XI.

The revised version substitutes a different expression for “fairly” (“appropriately and without abuse, bullying and intimidation”). The language is drawn from Recommendation 18 of the Bellamy Commission Report. It is a more accurate characterization of the problematic conduct that this anti-discrimination and anti-harassment provision is generally targeting.

Failure to Adhere to Council Policies and Procedures

As in the case of the provision on Improper Use of Influence, this provision reflects what is currently part of one of the “key statements of principle” in the existing Code of Conduct.

If the Code of Conduct were to contain explicit reference to all of the Council policies and procedures binding on members of Council, it would be a most unwieldy document. On the other hand, members of Council should be made aware of their responsibility to adhere to Council policies and procedures that apply to them and the way in which they conduct themselves (e.g., not exceeding the permissible level of involvement in procurement processes). It is therefore important that there be a provision in the body of the Code of Conduct that underscores that responsibility. Of course, this in no way inhibits members of Council in their criticism of or advocacy for change in existing policies and procedures.

Reprisals and Obstruction

This kind of provision is common to regulatory regimes establishing codes of conduct and complaint mechanisms. It fills an obvious void in the current Code of Conduct. It also reinforces the provisions of the City of Toronto Act, 2006 conferring investigative authority on the Integrity Commissioner and obligations to cooperate in investigations.

Protections for Members of Council

Among other matters, the Policy and Finance Committee requested that I consider whether the Code of Conduct should contain greater protections for members of Council who are the subject of unmeritorious complaints and, indeed, provide for some sort of appeal from the Integrity Commissioner’s findings or Council actions on the Integrity Commissioner’s reports.

Earlier this year, the Complaint Protocol was revised to give members of Council greater protection against the investigation of frivolous, vexatious and bad faith complaints. Those will remain in place. In response to the concerns of the Policy and Finance Committee, I have also included a provision in the Code of Conduct that will safeguard members of Council from complaints when acting on the written advice of the Integrity Commissioner.

Now that the role of the Integrity Commissioner and the Council in dealing with the Integrity Commissioner's reports has been given a statutory basis in the City of Toronto Act, 2006, it is my sense that the process would, in appropriate instances, give rise to a right to make an application for judicial review under the Judicial Review Procedure Act. As to whether there should be some kind of appeal beyond this, I would note that this is not an element in the legislation establishing parliamentary ethics or integrity commissioners, though the Senate Ethics Officer does operate under the supervision of a Senate Committee and requires its consent to conduct a formal inquiry.

As a result, my current position is that an appeal is not necessary and any regime such as that under which the Senate Ethics Officer operates would severely compromise the independence of the office of Integrity Commissioner. I will, however, keep this matter under review and, as requested, report early in 2007 on this question. I will also include the issue of legal assistance for members subject to complaints in the process of revising the Complaint Protocol for which the suggested deadline is also early in the term of the new Council.

Compliance with the Code of Conduct

Until the City of Toronto Act, 2006, it was unclear what, if any powers City Council possessed to sanction members of Council who violated the Code of Conduct beyond a call for an apology. Now, when the Act comes into force, City Council will have clear authority to impose one of two sanctions in response to a report from the Integrity Commissioner making a finding of a violation of the Code of Conduct. It is therefore appropriate to include reference to those possible sanctions in the Code of Conduct itself.

The Bellamy Commission in fact recommended (Recommendation 46) a considerably wider range of sanctions than those contained in subsection 160(5) of the City of Toronto Act, 2006:

...public reprimands, public apologies, expulsion from one or more committee meetings, removal from committee posts or committee chair positions, expulsion from one or more Council meetings, or at the high end of the spectrum, a fine or a declaration of vacancy in the councillor's seat.

In my initial recommendations to the Steering Committee, I recommended inclusion of all of these except the last two (a fine and a declaration of vacancy). It seemed clear that without express authority in the City of Toronto Act, 2006, those were not legally permissible sanctions. However, the City Solicitor has also advised that legislative amendments would be required to implement the Bellamy recommendations that City Council or a local board could (as applicable) also have the power to remove members from one or more meetings of Council, a local board or their committees. I have therefore removed those sanctions from the recommended list.

The proposed Code of Conduct does, however, incorporate the balance of the Bellamy recommended list of sanctions, and also a couple of subsidiary sanctions on repayment or reimbursement. Given the range of conduct covered by the Code of Conduct, there is ample justification for a wide range of sanctions for violation, which Council can tailor to the particular circumstances of the report before it.

As for those additional sanctions for which legislative action is required, I recommend that they be reviewed further and, if necessary, be made part of the City's request for legislative amendment in the mandatory two year review of the operation of the City of Toronto Act, 2006

In the Steering Committee, there was some suggestion that the Complaint Protocol should make it clear that City Council should only be able to accept or reject the Integrity Commissioner's recommendation for a sanction. Modifications were not appropriate. As a consequence, the Steering Committee referred that matter for consideration by the Integrity Commissioner and report back to Council.

On that, my opinion is that this would tie Council's hands unnecessarily under a regime where the Integrity Commissioner's role is only a recommendatory one and where at least subsection 160(5) seems to contemplate independent Council consideration of what is an appropriate sanction having regard to the Integrity Commissioner's report and recommendations. Nonetheless, I would recommend, in terms of modifications to the Complaint Protocol, that Council not have authority to refer the issue of sanction to a subcommittee or some other person or body. If there is to be any reconsideration of the appropriateness of the Integrity Commissioner's recommendations for sanction, that should occur by way of reference back to the Integrity Commissioner. To do otherwise could jeopardize my office's independence. Council as a whole should take responsibility for accepting, rejecting, or modifying the Integrity Commissioner's recommendations as to sanction. It should therefore deny itself the capacity to insert another layer into the complaint assessment process.

Looking Ahead:

These proposals for a revision of the Code of Conduct do not respond to all the "Ethics" recommendations of the Bellamy Commission report or my own assessment of where there is room for improvement in the overall process. In particular, they do not give effect in any significant way to the Bellamy recommendations on conflicts of interest or apparent conflicts of interest.

Conflicts of Interest and Apparent Conflicts of Interest

While the current Code of Conduct makes reference to conflict of interest, it is the Municipal Conflict of Interest Act that sets the standards and establishes the mechanism for complaints of conflict of interest on the part of members of municipal councils across the province. In matters covered by the Municipal Conflict of Interest Act, the Complaint Protocol provides that the Integrity Commissioner must yield to the court process created by that Act for complaints under it. All that the Integrity Commissioner can do at present is provide general advice on the obligations of members of Council under that Act.

Nonetheless, the reach of the Act is confined to the direct and indirect pecuniary interests of members of Council and their immediate family (spouses, parents and children). In Recommendations 20-33 of the Bellamy Commission Report, there is recognition that today the public views conflict of interest much more expansively than the Act does. As a consequence, the Commission recommended an expansion in the scope of conflict of interest to include activities such as trying to secure preferential treatment from the City of Toronto for one's friends, staff,

and family in an extended sense. In fact, the Bellamy recommendations go further than actual conflicts of interest to urge rules that also cover apparent conflicts of interest.

To this point, in the parliamentary conflict of interest Acts, only those of British Columbia (for MPPs), Alberta, Saskatchewan, and the Yukon (in each case, for Ministers only) contain provisions dealing with apparent conflicts of interest. However, the current federal Values and Ethics Code for the Public Service covers apparent conflicts of interest. In his testimony on September 5, 2006, before the Senate Committee considering the Federal Accountability Bill, the federal Parliamentary Ethics Commissioner, Bernard Shapiro was critical of the Bill's failure to deal with apparent conflicts of interest.

In the proposals that I prepared for consideration by the Steering Committee, I therefore drafted a conflict of interest provision that attempted to respond to the Bellamy Commission recommendations for rules regulating conflict of interest in a broader sense than that contained in the current Municipal Conflict of Interest Act and extending to apparent conflicts of interest.

However, some members of the Steering Committee were apprehensive that the concept of "an apparent conflict of interest" was too vague or nebulous and would give rise to any number of groundless allegations or complaints. The Steering Committee therefore requested me to consider removing the paragraph in the provision dealing with apparent conflicts of interest and to report on that request to the Policy and Finance Committee or directly to Council itself.

Subsequently, the City Solicitor advised me that a provision which would regulate conflict of interest in this broader sense as well as apparent conflicts of interest in the same manner as the Municipal Conflict of Interest Act (i.e., incorporates the extended penalties: the prohibitions on voting, participation in discussion, attendance etc.) might be subject to legal challenge on the basis that it frustrates the purpose of that Act contrary to subsection 10(11) of the City of Toronto Act, 2006. Subsection 10(11) is as follows:

- (2) Without restricting the generality of subsection (1), there is a conflict between a city by-law and an Act, regulation or instrument described in that subsection if the by-law frustrates the purpose of the Act, regulation or instrument.*

The City Solicitor also advised that the standard of "an apparent conflict of interest" is a very high one. While it may be appropriate for government employees who are to act impartially, it is not a standard that is as easily applied to any legislator including members of Council. Members of Council have an advocacy role (i.e., they advocate positions on what public policy should be) and make policy decisions in the public interest that in some cases operate to the special benefit of private individuals (e.g., site specific zoning amendments). In this respect, the City Solicitor drew to my attention that the Alberta Select Special Conflict of Interest Act Review Committee (acting on the advice of its Ethics Commissioner) (May 2006) did not recommend amending the Alberta Conflict of Interest Act to include apparent conflict of interest for all MPPs. The City Solicitor also was concerned that my formulation of conflict of interest in the broader sense identified by the Bellamy Commission was subject to interpretation as simply another expression of the concept of apparent (as opposed to real) conflict of interest.

The City Solicitor has therefore advised that any response to the Bellamy recommendations on extending the reach of conflict of interest be dealt with in discrete provisions of the Code identifying particular species of conduct (as exemplified by the provisions on gifts and improper

use of influence as well as the recently adopted policy on the appointment of relatives). Upon consideration of the Steering Committee's request and the City Solicitor's advice, I have decided not to press ahead in this report with the recommendation for inclusion in the Code of Conduct of a specific conflict of interest provision.

Nonetheless, it is important that the public have trust in the probity of their elected officials and that places a special obligation on members of Council to ensure that reasonably-informed members of the public do not perceive them to have a conflict of interest in a sense beyond that of direct and indirect pecuniary interest contained in the Municipal Conflict of Interest Act. Indeed this should apply even though an actual conflict may not exist. Regulating one's conduct to avoid giving that appearance should not be too much to ask. Thus, for example, it is only common sense for members of Council to avoid frequent photo opportunities with a particular developer or someone seeking to do business with the City even if there is no conflict of interest either under the provincial Act or the extended sense of conflict on interest recommended here (such as trying to secure preferential treatment). Similarly, members of Council should be careful that their political staff are not involved in external activities that might call into question on the part of the public the member's involvement at Council in issues that are linked to the staff member's outside activities.

As a consequence, I have included the concept of "conflict and apparent conflict of interest" as a key statement of principle in the Preamble to the revised Code of Conduct. While this does not create a free-standing, enforceable provision, it at least will inform the interpretation of those specific provisions of the Code that have conflict of interest dimensions and serve as a caution to members of Council in the conduct of their affairs. It is also an issue that should be kept under review on the basis of experience with the interpretation and application of such provisions in those jurisdictions that have them currently.

Even more importantly, the City should make every endeavour to persuade the provincial government to either modernize the Municipal Conflict of Interest Act or confer on the City of Toronto authority to create its own conflict of interest regime in place of or supplementary to that Act. Aside from the fact that the existing Act places legal impediments in the way of the City extending the concept of conflict of interest beyond the formulation in that Act, it is simply Byzantine to have a regime under which the only way of dealing legally with conflict of interest in a municipal setting is by way of an elector making an application to a judge and where the principal and mandatory penalty (save in the case of inadvertence) is the sledgehammer of an order that the member's office is vacated.

Other Bellamy Recommendations

Some of the other relevant Bellamy Commission recommendations on Ethics are more appropriately located in a reevaluation of the existing Complaint Protocol e.g. Bellamy Recommendation 27 that members of the public should be able to make anonymous complaints to the Integrity Commissioner and that the current requirement of an affidavit be removed. The same is true of some of my own concerns such as whether there should be a time limit for making complaints, whether the Integrity Commissioner should have limited discretion to continue an investigation despite the complainant indicating a desire to withdraw it, and whether the Complaint Protocol should contain a provision requiring notice to any member of Council or local board (restricted definition) against whom the Integrity Commissioner is contemplating an

adverse report to enable comment before the report is finalized. More generally, the Complaint Protocol will require a careful evaluation in the light of any recommendations from this Report that Council adopts and the provisions of the City of Toronto Act, 2006. I am therefore asking Council to direct that that work proceed.

There are also some more substantive issues arising out of the current provisions of the Complaint Protocol and, in particular, the principle contained in the Complaint Protocol that the Integrity Commissioner not have jurisdiction over complaints when there is in place an existing mechanism for the resolution of issues (either internal or external).

In the past, I have drawn attention to the fact that this denies the Integrity Commissioner any significant role in entertaining complaints about the behaviour of members of Council at Council or in Committee. Discipline over such matters rests primarily with the person presiding over Council or the relevant Committee and, in general, that is how it should remain. However, there may be occasions on which it is appropriate for such issues to be referred to the Integrity Commissioner and I have suggested that the procedural by-law revision process is the appropriate venue for that to take place. There has also been some suggestion that the Integrity Commissioner replace the use of an external consultant in the case of staff complaints of harassment and discrimination against members of Council. These are both issues (along with that of apparent conflicts of interest) that should be subject to ongoing consideration and review.

Conclusions:

The existing Code of Conduct has provided a strong starting point in the evolution of a set of principles and rules covering the ethical and integrity obligations of members of Council. However, the City operates in an environment in which the public is demanding greater probity on the part of their elected officials. At the City of Toronto, those public expectations have been informed and fuelled by the events that gave rise to the Bellamy Commission and the recommendations coming out of that Commission's Report. The Integrity Commissioner has also now had two years' experience with the existing Code of Conduct and that experience has revealed several shortcomings in that Code. The object of this report and the recommendations that it makes for change is to provide a further significant step in the movement towards comprehensive and appropriate Codes of Conduct for members of Council and their political staff as well as members of local boards as defined in Part V ("Accountability and Transparency") of the City of Toronto Act, 2006.

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Attachments

*Appendix I: Revised Code of Conduct for Members of Council
Appendix II: Report of Integrity Commissioner to Bellamy Recommendations Steering Committee, May 8, 2006*

Appendix III: Report of Integrity Commissioner to Bellamy Recommendations Steering Committee, July 5, 2006

Appendix IV: Report of Integrity Commissioner to Bellamy Recommendations Steering Committee, August 30, 2006

APPENDIX I

CODE OF CONDUCT FOR MEMBERS OF COUNCIL
CITY OF TORONTO

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| <p><u>PREAMBLE:</u></p> <p><i>Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. To this end, adoption of the Code of Conduct for Members of Council is one of several initiatives being undertaken by the City of Toronto during its first term as a unified City. 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. The Code of Conduct supplements and is compatible with the laws governing the conduct of members.</i></p> <p><i>The key statements of principle that underline this are as follows:</i></p> <ul style="list-style-type: none"> • <i>Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;</i> • <i>no member of Council shall use the influence of their office for any purpose other than for the exercise of his or her official duties;</i> • <i>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 bear close public scrutiny; and</i> • <i>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.</i> | <p><u>PREAMBLE:</u></p> <p><i>Improving the quality of public administration and governance can be achieved by encouraging high standards of conduct on the part of all government officials. In particular, the public is entitled to expect the highest standards of conduct from the members that it elects to local government. In turn, adherence to these standards will protect and maintain the City of Toronto's reputation and integrity.</i></p> <p><i>To these ends, during its first term as a unified City, the City of Toronto, as one of several initiatives, adopted a Code of Conduct for Members of Council. Subsection 157(1) of the City of Toronto Act, 2006 now requires the City to establish Codes of Conduct for members of Council and of certain local boards of the City. In response to this requirement, the City has revised and updated the original Code of Conduct. It is intended to supplement and be compatible with the laws governing the conduct of members.</i></p> <p><i>The key statements of principle that underline the Code of Conduct are as follows:</i></p> <ul style="list-style-type: none"> • <i>Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;</i> • <i>Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;</i> • <i>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 bear close public scrutiny; and</i> |

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| | <ul style="list-style-type: none"> 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, and the City Council. |
| <p><u>I. STATUTORY PROVISIONS REGULATING CONDUCT:</u></p> <p><i>This Code of Conduct is consistent with the existing statutes governing the conduct of members. Four pieces of provincial legislation govern the conduct of members of Council:</i></p> <ul style="list-style-type: none"> <i>the Municipal Act, and the Council Procedural By-law passed under section 55 of that Act;</i> <i>the Municipal Conflict of Interest Act;</i> <i>the Municipal Elections Act, 1996; and</i> <i>the Municipal Freedom of Information and Protection of Privacy Act.</i> <p><i>The Criminal Code of Canada also governs the conduct of members of Council.</i></p> | <p><u>I. STATUTORY PROVISIONS REGULATING CONDUCT:</u></p> <p><i>This Code of Conduct operates along with and as a supplement to the existing statutes governing the conduct of members. Four pieces of provincial legislation govern the conduct of members of Council:</i></p> <ul style="list-style-type: none"> <i>the City of Toronto Act, 2006, and the Council Procedural By-law passed under section 189 of that Act;</i> <i>the Municipal Conflict of Interest Act;</i> <i>the Municipal Elections Act, 1996; and</i> <i>the Municipal Freedom of Information and Protection of Privacy Act.</i> <p><i>The Criminal Code of Canada also governs the conduct of members of Council.</i></p> |
| | <p><u>II. APPLICATION:</u></p> <p><i>This Code of Conduct applies to all members of Council (including the Mayor).</i></p> <p><i>This Code of Conduct also applies, subject to any necessary modification, to members of local boards (restricted definition) as defined in section 156 of the City of Toronto Act, 2006.</i></p> <p><i>(The provisions of the Municipal Conflict of Interest Act also apply to local boards, as defined in that Act, with decision-making power.)</i></p> |
| | <p><u>III. DEFINITIONS:</u></p> <p><i>In the Code of Conduct, the terms “child”, “parent” and “spouse” have the same meanings as in the Municipal Conflict of Interest Act:</i></p> <p><i>“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;</i></p> <p><i>“parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;</i></p> |

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| | <p><i>“spouse” means a person to whom the person is married of with whom the person is living in a conjugal relationship outside marriage</i></p> |
| <p><u>II. GIFTS AND BENEFITS:</u></p> <p><i>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. One example would be that no member should act as a paid agent before Council, or a committee of Council, or any agency, board, or commission of the City. Another example would be that no member should refer third parties to a person, partnership, or corporation in exchange for payment or other personal benefit.</i></p> <p><i>Examples of exceptions to the non-acceptance of gifts or personal benefits by members in relation to their official duties are:</i></p> <ul style="list-style-type: none"> • <i>compensation authorized by law;</i> • <i>such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol, <u>custom</u> or social obligation;</i> • <i>a political contribution otherwise reported by law;</i> • <i>services provided without compensation by persons volunteering their time;</i> • <i>suitable memento of a function honouring the member;</i> • <i>food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country;</i> • <i>food and beverages consumed at banquets, receptions or similar events; and</i> • <i>communication to the offices of a member, including subscriptions to newspapers and periodicals.</i> | <p><u>IV. GIFTS AND BENEFITS:</u></p> <p><i>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, unless permitted by the exceptions listed below.</i></p> <p><i>For these purposes, a fee or advance paid to or a gift or benefit provided with the member’s knowledge to a member’s spouse, child, or parent, and to a member’s staff that is connected directly or indirectly to the performance of the member’s duties is deemed to be a gift to that member.</i></p> <p><i>The following are recognized as exceptions:</i></p> <ul style="list-style-type: none"> (a) <i>compensation authorized by law;</i> (b) <i>such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;</i> (c) <i>a political contribution otherwise reported by law;</i> (d) <i>services provided without compensation by persons volunteering their time;</i> (e) <i>a suitable memento of a function honouring the member;</i> (f) <i>food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country;</i> (g) <i>food and beverages consumed at banquets, receptions or similar events, if:</i> <ol style="list-style-type: none"> <i>1. attendance serves a legitimate business purpose;</i> <i>2. the person extending the invitation or a representative of the organization is in attendance; and</i> <i>3. the value is reasonable and the invitations infrequent; and</i> (h) <i>communication to the offices of a member, including subscriptions to newspapers and periodicals.</i> <p><i>Except for category (c), these exceptions do not apply to lobbyists. Lobbyists are not permitted to make a gift or</i></p> |

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| | <p><i>provide a benefit under this provision unless it is a political contribution permitted by law.</i></p> <p><i>In the case of categories (b), (e), (f), (g), and (h), if the value of the gift or benefit exceeds \$300, or if the total value received from any one source during the course of a calendar year exceeds \$300, the member shall within 30 days of receipt of the gift or reaching the annual limit, file a disclosure statement with the Integrity Commissioner.</i></p> <p><i>The disclosure statement must indicate</i></p> <ol style="list-style-type: none"> <i>1. the nature of the gift or benefit;</i> <i>2. its source and date of receipt;</i> <i>3. the circumstances under which it was given or received;</i> <i>4. its estimated value;</i> <i>5. what the recipient intends to do with any gift; and</i> <i>6. whether any gift will at any point be left with the City.</i> <p><i>Any disclosure statement will be a matter of public record.</i></p> <p><i>On receiving a disclosure statement, the Integrity Commissioner shall examine it to ascertain whether the receipt of the gift or benefit might, in her or his opinion, create a conflict between a private interest and the public duty of the member. In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the member to justify receipt of the gift or benefit.</i></p> <p><i>Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the member to return the gift, reimburse the donor for the value of any gift or benefit already consumed, or forfeit the gift or the value of any gift or benefit already consumed to the City.</i></p> <p><i>Except in the case of category (f), a member may not accept a gift or benefit worth in excess of \$500 or gifts and benefits from one source during a calendar year worth in excess of \$500.</i></p> |
| <p><u>III. CONFIDENTIAL INFORMATION:</u></p> <p><i>Confidential information includes information in the possession of the City which the City is either prohibited from disclosing, or is required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act, (MFIPPA) or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from</i></p> | <p><u>V. CONFIDENTIAL INFORMATION:</u></p> <p><i>Confidential information includes information in the possession of the City that the City is either prohibited from disclosing, or is required to refuse to disclose, under the Municipal Freedom of Information and Protection of Privacy Act, (MFIPPA) or other legislation. Generally, MFIPPA restricts or prohibits disclosure of information received in confidence from</i></p> |

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| <p><i>third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege. The Municipal Act allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential. For the purposes of the Code of Conduct, “confidential information” also includes this type of information.</i></p> <p><i>No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form except when required by law or authorized by Council to do so.</i></p> <p><i>Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.</i></p> <p><i>Under the Procedural By-law (authorized under s. 55 of the Municipal Act), where a matter that has been discussed at an in-camera (closed) meeting remains confidential, no member shall disclose the content of the matter, or the substance of deliberations, of the in-camera meeting.</i></p> <p><i>The following are examples of the types of information that a member of Council must keep confidential:</i></p> <ul style="list-style-type: none"> • <i>items under litigation, negotiation, or personnel matters;</i> • <i>information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);</i> • <i>price schedules in contract tender or Request For Proposal submissions if so specified;</i> • <i>information deemed to be “personal information” under the Municipal Freedom of Information and Protection of Privacy Act; and</i> • <i>statistical data required by law not to be released (e.g. certain census or assessment data).</i> | <p><i>third parties of a corporate, commercial, scientific or technical nature, information that is personal, and information that is subject to solicitor-client privilege. The Municipal Act allows information that concerns personnel, labour relations, litigation, property acquisitions, the security of the property of the City or a local board, and matters authorized in other legislation, to remain confidential. For the purposes of the Code of Conduct, “confidential information” also includes this type of information.</i></p> <p><i>No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form except when required by law or authorized by Council to do so.</i></p> <p><i>Nor shall members use confidential information for personal or private gain, or for the gain of relatives or any person or corporation. As one example, no member should directly or indirectly benefit, or aid others to benefit, from knowledge respecting bidding on the sale of City property or assets.</i></p> <p><i>Under the Procedural By-law (passed under section 189 of the City of Toronto Act, 2006), a matter that has been discussed at an in-camera (closed) meeting remains confidential. No member shall disclose the content of any such matter, or the substance of deliberations at an in-camera meeting until the Council or committee discusses the information at a meeting that is open to the public or releases the information to the public.</i></p> <p><i>The following are examples of the types of information that a member of Council must keep confidential:</i></p> <ul style="list-style-type: none"> • <i>items under litigation, negotiation, or personnel matters;</i> • <i>information that infringes on the rights of others (e.g., sources of complaints where the identity of a complainant is given in confidence);</i> • <i>price schedules in contract tender or Request For Proposal submissions if so specified;</i> • <i>information deemed to be “personal information” under the Municipal Freedom of Information and Protection of Privacy Act; and</i> • <i>statistical data required by law not to be released (e.g., certain census or assessment data).</i> |

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| | <i>Members of Council should not access or attempt to gain access to confidential information in the custody of the City unless it is necessary for the performance of their duties and not prohibited by Council policy.</i> |
| <p><u>IV. USE OF CITY PROPERTY, SERVICES AND OTHER RESOURCES:</u></p> <p><i>No member of Council should use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, web sites, Council transportation delivery services and Councillor global budgets) for activities other than the business of the Corporation. Nor should any member obtain financial gain from the use or sale of City-developed intellectual property (for example, inventions, creative writings and drawings), computer programs, technical innovations, or other items capable of being patented, since all such property remains exclusively that of the City.</i></p> | <p>VI.</p> |
| <p><u>V. ELECTION CAMPAIGN WORK:</u></p> <p><i>Members are required to follow the provisions of the Municipal Elections Act, 1996. No member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters) for any election campaign or campaign related activities. No member shall undertake campaign-related activities on City property during regular working hours. No member shall use the services of persons during hours in which those persons receive any compensation from the City.</i></p> | <p><u>VII. ELECTION CAMPAIGN WORK:</u></p> <p><i>Members are required to follow the provisions of the Municipal Elections Act, 1996. No member shall use the facilities, equipment, supplies, services or other resources of the City (including Councillor newsletters and websites linked through the City's website) for any election campaign or campaign related activities. No member shall undertake campaign-related activities on City property during regular working hours. No member shall use the services of persons during hours in which those persons receive any compensation from the City.</i></p> |
| | <p><u>VIII. IMPROPER USE OF INFLUENCE:</u></p> <p><i>No member of Council shall use the influence of her or his office for any purpose other than for the exercise of her or his official duties.</i></p> <p><i>Examples of prohibited conduct are the use of one's status as a member of Council to improperly influence the decision of another person to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise. This would include attempts to secure preferential treatment beyond activities in which members normally engage on behalf of their constituents as part of their official duties. Also prohibited is the holding out of the prospect or promise of future advantage through a member's supposed influence within Council in return for present actions or inaction.</i></p> |

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| | <p><i>For the purposes of this provision:</i></p> <p><i>“private advantage” does not include a matter:</i></p> <ul style="list-style-type: none"> <i>(a) that is of general application;</i> <i>(b) that affects a member of Council, his or her parents, children or spouse, staff members, friends, or associates, business or otherwise as one of a broad class of persons; or</i> <i>(c) that concerns the remuneration or benefits of a member of Council.</i> |
| <p><u>VI. BUSINESS RELATIONS:</u></p> <p><i>No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the Municipal Conflict of Interest Act.</i></p> | <p><u>IX. BUSINESS RELATIONS:</u></p> <p><i>No member shall act as a paid agent before Council, its committees, or an agency, board or commission of the City except in compliance with the terms of the Municipal Conflict of Interest Act.</i></p> <p><i>A member shall not refer a third party to a person, partnership, or corporation in exchange for payment or other personal benefit.</i></p> |
| <p><u>VII. CONDUCT RESPECTING CURRENT AND PROSPECTIVE EMPLOYMENT:</u></p> <p><i>No member shall allow the prospect of his or her future employment by a person or entity to detrimentally affect the performance of his or her duties to the City.</i></p> | <p>X.</p> |
| <p><u>VIII. CONDUCT AT COUNCIL:</u></p> <p><i>Members shall conduct themselves with decorum at Council in accordance with the provisions of the Council Procedural By-law.</i></p> | <p>XI.</p> |
| <p><u>IX. CONDUCT RESPECTING STAFF:</u></p> <p><i>Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council approved budget, process or policy, to the appropriate Standing Committee.</i></p> <p><i>Under the direction of the Chief Administrative Officer, staff serves the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to advise based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council.</i></p> | <p>XII.</p> |

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| <p><i>Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of the staff of the City.</i></p> <p><i>No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person’s duties, including the duty to disclose improper activity.</i></p> <p><i>In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles are captured in the Schedule to the Code of Conduct and include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.</i></p> | |
| <p>X. <u>CONDUCT RESPECTING LOBBYISTS:</u></p> <p><i>The term “Lobbyist” includes the following:</i></p> <ul style="list-style-type: none"> • <i>“consultant lobbyist” means a person who, for payment, lobbies on behalf of a client and includes, but is not limited to, government relations consultants, lawyers, accountants, or other professional advisors who provide lobbying services for their clients;</i> • <i>“corporate in-house lobbyists” means an employee of a corporation that carries on commercial activities for financial gain and who lobbies as a significant part of their duties;</i> • <i>“organization in-house lobbyist” means an employee of a non-profit organization, when one or more employees lobby public office holders and where the accumulated lobbying activity of all such employees would constitute a significant part of the duties of one employee; and</i> | <p>XIII. <u>CONDUCT RESPECTING LOBBYISTS:</u></p> <p><i>Lobbying is a permissible but regulated activity. In the City of Toronto, it is defined in terms of any communication between a paid lobbyist or a voluntary lobbyist on behalf of a for-profit entity and a public official (including a member of Council) in respect of a broad range of subject matters.</i></p> <p><i>Members of Council are responsible for upholding the terms of the Lobbyist Regulation By-law (Lobbyist Registration and Lobbyists’ Code of Conduct)</i></p> <p><i>More particularly, members of Council should not engage in communications in respect of the list of subject matters contained in the Lobbyist Regulation By-law with a person who is not registered as required by that By-law.</i></p> <p><i>Members of Council should also not knowingly communicate with a registered lobbyist who is acting in violation of the Lobbyist Regulation By-law.</i></p> |

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| <ul style="list-style-type: none"> • <i>volunteer lobbyist” means a person who lobbies without payment on behalf of an individual, corporation, or organization.</i> <p><i>Lobbying is usually defined as direct or indirect efforts to solicit member’s support and influence government decisions on behalf of another party or an organization, often away from public scrutiny. Lobbying activity is to be distinguished from routine constituency matters, or advice seeking by members of the public, or contacts by members or employees of government conducting official business. Lobbying is also distinguishable from matters that are the subject of Committee deputation, or other processes that are a matter of public record where individuals are named and their interest and organizational affiliation identified.</i></p> <p><i>Members shall be vigilant in their duty to serve public interests when faced with lobbying activity. Members can use the following as a guide to assist in identifying whether they are being lobbied:</i></p> <ul style="list-style-type: none"> • <i>During the past year, has the contact person attempted to influence you personally, for example, in any legislative or administrative action that would have benefited him or her or his or her employer financially?</i> • <i>Does the contact person do business or seek to do business with the City?</i> • <i>Is the contact person seeking to influence outcomes outside a public forum on a matter involving, for example, a license, permit or other entitlement for use currently pending before the City?</i> • <i>Is the contact person a provincially or federally registered lobbyist employer or a client of a registered lobbyist? (Refer to the respective Web Sites)</i> • <i>Is the contact person a provincially or federally registered lobbyist or lobbying firm?</i> • <i>Does the contact person fall within the definitions provided above?</i> | <p><i>In the event that a lobbyist is in violation of the Lobbyist Regulation By-law, members of Council should either refuse to deal with the lobbyist on those terms or, where appropriate, terminate the communication with the lobbyist at once and communicate the violation or attempted violation to the Lobbyist Registrar.</i></p> <p><i>[This provision shall come into force on the enactment of the Lobbyist Regulation By-Law under the City of Toronto Act, 2006. Until then, Part X, now renumbered as Part XIII, of the original Code of Conduct remains in effect.]</i></p> |

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| <p><u>XI. DISCREDITABLE CONDUCT:</u></p> <p><i>All members of Council have a duty to treat members of the public, one another and staff <u>fairly</u> and to ensure that their work environment is free from discrimination and harassment. The Ontario Human Rights Code applies, as does the Human Rights, Harassment and Hate Activity Policy Framework adopted by Council at its meeting of December 16 and 17, 1998.</i></p> | <p><u>XIV. DISCREDITABLE CONDUCT:</u></p> <p><i>All members of Council have a duty to treat members of the public, one another and staff appropriately and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment.</i></p> <p><i>The Ontario Human Rights Code applies, as does the Human Rights, Harassment and Hate Activity Policy Framework adopted by Council at its meeting of December 16 and 17, 1998.</i></p> |
| | <p><u>XV. FAILURE TO ADHERE TO COUNCIL POLICIES AND PROCEDURES:</u></p> <p><i>A number of the provisions of this Code of Conduct incorporate policies and procedures adopted by Council. More generally, members of Council are required to observe the terms of all policies and procedures established by City Council.</i></p> <p><i>This provision does not prevent a member of Council from requesting that Council grant an exemption from a policy.</i></p> |
| | <p><u>XVI. REPRISALS AND OBSTRUCTION:</u></p> <p><i>Members of Council should respect the integrity of the Code of Conduct and investigations conducted under it. Any reprisal or threat of reprisal against a complainant or anyone for providing relevant information to the Integrity Commissioner is therefore prohibited. It is also a violation of the Code of Conduct to obstruct the Integrity Commissioner in the carrying out of her or his responsibilities, as, for example, by the destruction of documents or the erasing of electronic communications.</i></p> |
| <p><u>XII. APPLICABILITY TO AGENCIES, BOARDS, COMMISSIONS AND OTHER BODIES:</u></p> <p><i>[To be replaced by II. in proposed version.]</i></p> | |
| | <p><u>XVII. ACTING ON ADVICE OF INTEGRITY COMMISSIONER</u></p> <p><i>Any written advice given by the Integrity Commissioner to a member binds the Integrity Commissioner in any subsequent consideration of the conduct of the member in the same matter as long as all the relevant facts known to the member were disclosed to the Integrity Commissioner.</i></p> |

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| <p><u>XIII. COMPLIANCE WITH THE CODE OF CONDUCT:</u></p> <p><i>(Refer to Note (2) on cover page of Code of Conduct)</i></p> <p><i>Members of Council are accountable to the public through the three-year election process. Between elections they may become disqualified and lose their seat if convicted of an offence under the Criminal Code of Canada or for failing to declare a conflict of personal interest under the Municipal Conflict of Interest Act, for example.</i></p> <p><i>This Code of Conduct is an agreement by members on their expected conduct. It is adopted by confirmatory by-law, as opposed to a specific by-law with an offence provision (that could be enforced under the Provincial Offences Act and could result in a fine of up to \$5000.00). While they may not be prosecuted or fined under it, members acknowledge the importance of the principles contained in this Code of Conduct and agree to support and adhere to it.</i></p> <p><i>As the head of the Council, the Mayor has as one of his or her duties, to be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed. Complaints or concerns from any person regarding alleged non-compliance with the Code by a member may be made to the Mayor in writing.</i></p> | <p><u>XVIII. COMPLIANCE WITH THE CODE OF CONDUCT:</u></p> <p><i>Members of Council are accountable to the public through the four-year election process. Between elections they may, for example, become disqualified and lose their seat if convicted of an offence under the Criminal Code of Canada or for failing to declare a conflict of personal interest under the Municipal Conflict of Interest Act.</i></p> <p><i>In addition, subsection 160(5) of the City of Toronto Act, 2006, authorizes Council to impose either of two penalties on a member of Council or a local board (restricted definition) following a report by the Integrity Commissioner that, in her or his opinion, there has been a violation of the Code of Conduct:</i></p> <ol style="list-style-type: none"> <i>1. A reprimand.</i> <i>2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or the local board, as the case may be, for a period of up to 90 days.</i> <p><u>Other Actions:</u></p> <p><i>The Integrity Commissioner may also recommend that Council or a local board (restricted definition) take the following actions:</i></p> <ol style="list-style-type: none"> <i>1. Removal from membership of a Committee or local board (restricted definition).</i> <i>2. Removal as Chair of a Committee or local board (restricted definition).</i> <i>3. Repayment or reimbursement of moneys received.</i> <i>4. Return of property or reimbursement of its value.</i> <i>5. A request for an apology to Council, the complainant, or both.</i> |

APPENDIX II

Report of Integrity Commissioner to Bellamy Recommendations
Steering Committee, May 8, 2006

June 1, 2006

INTEGRITY COMMISSIONER:

City Council on May 23, 24 and 25, 2006, adopted the following Motion, as amended, and in so doing has received the report (May 8, 2006) from the Integrity Commissioner, for information. Council has forwarded a copy of the Integrity Commissioner's Annual Report to the Bellamy Implementation Steering Committee with a request that the Committee consider, as part of its established mandate, expanding the jurisdiction of the Integrity Commissioner and Complaint Protocol to apply to citizen members of agencies, boards and commissions:

J(4) Annual Report of the Integrity Commissioner for the Period September 1, 2004 to December 31, 2005

Moved by Mayor Miller, seconded by Deputy Mayor Feldman

“WHEREAS City Council appointed David Mullan as the Integrity Commissioner for the City of Toronto to provide independent and consistent complaint prevention and resolution, advice, opinion and education respecting the application of the Code of Conduct for Members of Council, and other by-laws/policies governing the ethical behaviour of members, including general interpretation of the Municipal Conflict of Interest Act; and

WHEREAS the Integrity Commissioner has submitted his annual report on the operations of the Integrity Commissioner's Office for the period September 1, 2004, to December 31, 2005;

***NOW THEREFORE BE IT RESOLVED THAT** City Council consider the report (May 8, 2006) from the Integrity Commissioner, and that the report be received for information.”*

Council also considered the following:

- Report (May 8, 2006) from the Integrity Commissioner.*

*for City Clerk
M. Toft/cd
Attachment*

*Sent to: Integrity Commissioner
Bellamy Implementation Steering Committee*

June 1, 2006

BELLAMY IMPLEMENTATION STEERING COMMITTEE:

City Council on May 23, 24 and 25, 2006, adopted the following Motion, as amended, and in so doing has received the report (May 8, 2006) from the Integrity Commissioner, for information. Council has forwarded a copy of the Integrity Commissioner's Annual Report to the Bellamy Implementation Steering Committee with a request that the Committee consider, as part of its established mandate, expanding the jurisdiction of the Integrity Commissioner and Complaint Protocol to apply to citizen members of agencies, boards and commissions:

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"WHEREAS City Council appointed David Mullan as the Integrity Commissioner for the City of Toronto to provide independent and consistent complaint prevention and resolution, advice, opinion and education respecting the application of the Code of Conduct for Members of Council, and other by-laws/policies governing the ethical behaviour of members, including general interpretation of the Municipal Conflict of Interest Act; and

WHEREAS the Integrity Commissioner has submitted his annual report on the operations of the Integrity Commissioner's Office for the period September 1, 2004, to December 31, 2005;

NOW THEREFORE BE IT RESOLVED THAT City Council consider the report (May 8, 2006) from the Integrity Commissioner, and that the report be received for information."

Council also considered the following:

- Report (May 8, 2006) from the Integrity Commissioner.

for City Clerk

M. Toft/cd

Attachment

Sent to: Integrity Commissioner
Bellamy Implementation Steering Committee

Date: May 8, 2006

To: City Council

From: David Mullan, Integrity Commissioner

Subject: Annual Report

Purpose:

To report on the operations of the Integrity Commissioner's Office for the period September 1, 2004 to December 31, 2005

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that Council receive this report.

Introduction

This is my first annual report. It covers the period September 1, 2004 to December 31, 2005. This reflects the decision that that it made sense for the period covered by the Integrity Commissioner's Reports to correspond to the office's fiscal year.

The Creation of the Office and the Appointment of an Integrity Commissioner

At its meeting on March 1, 2 and 3, 2004, City Council adopted a Report from the Policy and Finance Committee authorizing the recruitment and appointment of a City Integrity Commissioner. At the conclusion of the recruitment process, City Council appointed me as its first Integrity Commissioner. I assumed my responsibilities on September 1, 2004 (though, as I noted in an April 2004 interim report to City Council, it was some time before I entered into a formal contract with the City).

At the same time, City Council requested the Budget Committee to provide funds for the office for the balance of 2004 in the amount of \$90,000, based on an annualized budget of \$200,000. This request was met and, subsequently, City Council allocated \$200,000 to the office for the fiscal year 2005. One of the assumptions behind the setting of this budget was that the office would at least initially be a part-time one, and that is reflected in my contract with the City.

My initial contract was for one year. However, at its meeting of July 19, 20, 21 and 26, 2005, City Council authorized the City Manager to enter into a further contract with me for a period up to the end of August 2007. As a consequence, I currently am operating under a two-year contract with the City that expires on August 31, 2007. Under that contract, the City may terminate me for cause or by giving me six months notice or salary in lieu.

The motion authorizing the appointment of an Integrity Commissioner spells out the mandate of the office. The Integrity Commissioner is

...to provide independent and consistent complaint prevention and resolution, advice, opinion and education respecting the application of the Code of Conduct for members of Council (“Code of Conduct”) and other by-laws/policies governing the ethical behaviour of members, including general interpretation of the Municipal Conflict of Interest Act.

It is under that mandate that I operated during the first sixteen months, and, indeed, still do today. However, City Council did contemplate an extension in the functions of the Integrity Commissioner. It also passed a motion recommending that the City

...continue to seek enabling legislation necessary for Council to enact by-laws implementing full Integrity Commissioner and Lobbyist Registry functions based on the provincial model.

That has not yet taken place though the passage of Bill 53, the Stronger City of Toronto for a Stronger Ontario Act (“Bill 53”) will presumably result in City Council possessing the capacity to achieve many, if not all of those objectives.

Critical to the successful functioning of the office and, in particular, maintenance of stakeholder confidence in its integrity is the concept of independence, a concept explicitly embodied in the Council motion authorizing the creation of the office. One of the ways that this objective is achieved is through the reporting process. I do not report to or through either the Mayor or the City Manager but to Council itself. In the case of reports on complaints and my annual and other interim reports, I report directly to Council while, in the instance of policy reports, I report to Council through the Policy and Finance Committee. It should also go on the public record that, during the period covered by this report (and to this day), I have had nothing but the utmost regard for the independence of my position from all at City Hall with whom I have had contact.

Getting the Office Started

Much of my time during the first four months was spent setting up the office both physically and operationally. In this, I was very capably advised and assisted by the City Manager’s Office and the City Clerk’s Office with briefings from many other members of Staff with whom I could expect to interact given the nature of my responsibilities. I also benefited from discussions with the Honourable Coulter Osborne, the Integrity Commissioner for the province of Ontario and the City’s Auditor General, Jeffrey Griffiths.

I was given an office on the 15th Floor of the West Tower of City Hall and continue to operate out of there today. Since late November, 2005, Zorida Ali, my part-time, Administrative Assistant has been an essential and highly valued part of my office. With the help of Staff, I was also able very quickly to establish a website; <http://www.toronto.ca/integrity/index.htm>. As well as describing my functions and providing biographical details, the website contains information about commencing complaints against Members of Council including the text of the Code of Conduct, the Complaint Protocol under which I operate, and the form required for lodging a

formal complaint. All my public reports appear on the website and there is a segment containing frequently-asked questions.

During the first few months of my appointment, I also met with all Members of Council both to introduce myself and the facilities of my office and to benefit from their perspectives on my role. That has proved invaluable.

Events Affecting the Work of the Office

Two events occurred in 2005, which will have a long-term impact on the nature and workings of the Integrity Commissioner's Office. The first was the release in September 2005 of the Report of the Commission of Inquiry into the Leasing of Computers at the City of Toronto ("the Bellamy Commission Report") and the second was the introduction into the provincial legislature on December 15, 2005, of Bill 53.

Much of the overall thrust of the Bellamy Commission Report as well as a whole slew of its detailed recommendations underscore the centrality of ethical behaviour and integrity in the functioning of this municipality. In its endorsement of the office of Integrity Commissioner and its calls for the enhancement of the powers of that office as well as the setting of higher standards for the conduct of Members of Council, it called on the City to reexamine the foundations of my Office and what it does. That process is ongoing and I am playing some role in the reevaluation. It is also important to note that, should City Council accept the bulk the recommendations of the Bellamy Commission Report on the role of the Integrity Commissioner, it is inevitable that the position would have to become a full-time one with a significant increase in the level of support.

If enacted in its present form, Bill 53 will provide the office of Integrity Commissioner with a statutory basis and confer on City Council much, if not all of the legal capacity it requires to establish a permanent office along the lines of that of the provincial Integrity Commissioner. It also makes specific provision for sanctions against Members of Council for Code of Conduct violations. In its mandating the office of an Ombudsman, it opens the door to the creation of a parallel mechanism for the making and resolution of complaints against Staff. As well, it requires a much closer monitoring of lobbying.

Having said that, I should also make it clear that I am concerned about some of the provisions in Bill 53 affecting the office of the Integrity Commissioner and made that clear to City Council Staff charged with representing the City's interests as this Bill proceeds through the legislative process. In particular, I think it is regrettable that the Act itself does not set the terms of office of the Integrity Commissioner and make provision that the Council must have cause to dismiss the Commissioner during her or his term of office. That is left to Council's discretion. If independence is a critical aspect of the office of Integrity Commissioner (and I have no doubt that it is), then, even in a Bill that has at its principal objective the devolution of far greater autonomy to the City, there should be specific provision for the customary guarantees of independence.

The Regular Work of the Office

The three principal components of my work are Advisory, Complaint Investigation and Adjudication, and Educational.

Advisory

The Advisory function has two formal dimensions as well as an informal element. I am formally responsible for providing advice to individual Members of Council who seek it. I also respond to references from City Council (including its Committees) requesting my guidance on policy issues involving ethics and integrity. Informally, I also interact with Staff in the development or assessment of policies and functions that raise ethics and integrity concerns or that affect the functioning of my office.

Giving advice to individual Members of Council is the least visible of my functions but it is a critical one. It is the least visible because, in most instances, advice is sought and given on a confidential basis (though I do provide examples later in this report of advice that I have given). It is critical because, as I pointed out in my April 2004 interim report, "it is far better to pre-empt potential violations of the Code of Conduct than to have to deal with such matters after the event by way of a complaint". Indeed, the more frequently Members of Council seek advice, the more justification there is for the claim that they are becoming much more attuned to the demands of the Code of Conduct and have developed confidence in the probity of my office.

Requests for advice come in a variety of ways from email and phone calls to formal letters seeking a written opinion. Often in the case of email and phone inquiries, there will be a quick or obvious answer. However, that is not always the case and I will need time to research and reflect. I have no problem at all putting any advice that I provide in writing and, indeed, will sometimes suggest that even where the request for advice is made verbally. I also do not have any concerns generally with the use to which a Member of Council puts any written advice that I have given and I make that clear in providing the advice. However, I am now insisting, if a Member of Council releases my advice publicly, that any such release be of the entire text of the opinion. To this point, I have not been put in the position of receiving a complaint against a Member of Council for engaging in a course of conduct that I advised would not violate the Code of Conduct!

In the period covered by this report, Council referred two matters to me for consideration: the possible leak of the name of the nominee to a civilian position on the Police Services Board and the issue whether Members of Council should be able to intervene on a Ward matter arising in another Councillor's Ward. On the first, I was not able to find the source of the leak but did make some general recommendations on the whole issue of confidentiality. My report on the second matter is described in greater detail later in this report in the context of a discussion of the Code of Conduct.

Council also implicated the Integrity Commissioner in two other matters during 2005. It set up an Advisory Task Force, of which I was a member, to consider improvements to the Code of Conduct Complaint Protocol and in particular to provide greater protection to Members of Council from complaints that were trivial, vexatious, not made in good faith, or without any

substance. The Task Force completed its work and forwarded a report to the Policy and Finance Committee in December 2005. As well, City Council made a reference to the Auditor General that involved the functioning of a panel of the Committee of Adjustment. In that matter, the Integrity Commissioner (along with the City Solicitor) was required to review the Auditor General's conclusions and report to Council.

In addition, the Mayor asked me to report to Council on the propriety of Members of Council providing references for those seeking positions with the City of Toronto, and the Administration Committee reiterated that request a few days later. The Committee also asked me to report to Council on the issue of City hiring of the relatives of Members of Council. As of December 31, 2005, I had not completed that work.

At a more informal level, I was involved with staff in a range of issues including aspects of the operation of the Corporate Access and Security office, the conflict of interest policy applicable to Staff, negotiation of community benefits as part of the planning process, and the development of strategies and technologies for protecting confidential information.

Complaint Investigation and Adjudication

My complaint investigation and adjudication function is confined to allegations of misconduct against Members of Council. It does not extend to the conduct of Staff. Other Members of Council, Staff, and the general public may bring a complaint.

During the first sixteen months, I received twenty-one formal complaints. Four of those complaints were from Staff or former Staff and only three from Members of Council, including a self-complaint. In fact, it was not until October 2005 that I received a formal complaint by a Member of Council against another. The other fourteen complaints came from members of the public.

By December 31, 2005, fifteen of those complaints had been finalized, including eight in which I made a report to Council on the merits of the complaint. In only one of those eight instances did I make a finding that a Member of Council had violated the Code of Conduct. (Subsequently, however, on another of the complaints brought in 2005 and still outstanding at the end of that year, I did determine that the respondent Councillor had violated the Code of Conduct.) In two of the five instances in which I rejected a formal complaint for lack of jurisdiction, I made a report to Council on my findings. Of the other two complaints, one was settled before my investigation got under way and the other was rejected without for lack of substance.

Below, I comment and make suggestions on a number of issues that arose about the Code of Conduct and the Complaint Protocol during the course of my first sixteen months. Many of those issues emerged in the course of my complaint investigation and adjudication work. Those matters aside, I encountered few difficulties in carrying out my investigative and adjudicative responsibilities.

With one exception, Members of Council who were the subject of complaints cooperated fully during the course of my investigations. They answered my questions, provided documentation, and allowed me access to their staff. Given that I have no power to compel them to do any of these things, this was a relief.¹

The one exception occurred in the context of an allegation of inappropriate behaviour towards a deputant at a Community Council meeting and came about as a result of the Member of Council objecting in principle to the investigation of the particular complaint and the procedures laid down in the Complaint Protocol. Given the public nature of the events in question, my ability to complete the investigation was not compromised by the Member's failure to cooperate fully. However, as a result of the Member's expression of concern at Council about my processes, as noted above, Council referred the whole matter of greater protection for Members of Council from frivolous, vexatious, bad faith, or without substance complaints to a Task Force. Ultimately, this was a beneficial side effect of the whole controversy, albeit that it was disconcerting to have these matters aired while the investigation was ongoing.

*In fact, issues of behaviour towards members of the public arise frequently both in formal complaints and informal communications to my office. I take these complaints under Clause XI of the Code of Conduct. It requires Members of Council to "treat members of the public, one another and staff **fairly** and to ensure that their work environment is free from discrimination and harassment". Almost invariably, these kinds of complaint surface in the wake of a decision-making process in which the member of the public has not obtained what he or she wanted or where the Member of Council has decided not to work on behalf of that person's interests. Without more, neither of these situations gives rise to any basis for a complaint under the Code of Conduct. I do not have nor should I have any general jurisdiction over the choices made by Members of Council as to the causes to which they will lend their energies and political support. Nonetheless, when the allegation is that the Member of Council not only made a choice against the complainant but, in doing so, was abusive, otherwise harassing, or discriminatory, it clearly comes within the realm of Clause XI and I must investigate if there is a credible foundation for the allegations in the formal complaint documentation.*

With the exception of three linked complaints, my investigations during the first sixteen months were not particularly complex. I was readily able to conduct them within the existing framework and resources of my office. This also enabled me to do a passable job in keeping my workload under control. However, what has been clear to me all along is that that situation could change quickly and dramatically were I to receive more than one or two complaints that raised complex factual and legal issues and involved the pursuit and interviewing of many witnesses and the gathering and analysis of extensive documentation. Were that to occur, the current resources of the office and my part-time capacity would not be adequate to the task.

Educational

My job description requires that I provide "outreach programs to members of Council and staff on legislation, protocols, and office procedures emphasising the importance of ethics for public confidence in municipal government". That did not happen in 2004-05, though I did engage in a

¹ Upon enactment, Bill 53 will confer coercive powers that will enable (at least in some contexts), the Integrity Commissioner to require production of documents.

number of discussions with Staff about the mounting of such a programme for Members of Council. The matter remains under active consideration with the target now being a programme in late 2006 or early 2007 following the swearing in of the new Council after the November 2006 municipal election.

To this point, the extent of my work on the educational element of my mandate has come indirectly through my other roles – reporting to Council and giving advice to Members of Council as well as in the creation of the frequently-asked questions segment of my website.

Other Aspects of My Work

In the course of the first sixteen months of the office, the media approached me on a number of occasions for information about the nature and workings of my office and I have always been willing to respond to such requests. I was also asked to speak to a variety of groups about the functions of the Integrity Commissioner. Once again, where feasible, I accepted those invitations. A list follows:

*Toronto Board of Trade Municipal Affairs Committee
Queen's University Alumni Association, Toronto Branch
City Solicitor's Solicitors' Meeting
Ontario Bar Association Municipal Law Section/MLDAO Joint Programme
Two delegations of Chinese Public Servants
Governing Toronto Panel*

In addition, I made linkages with the York University Centre for Practical Ethics, the University of Toronto Centre for Ethics, and Professor Greg Levine, instructor in Government Ethics Law in Canada at the University of Western Ontario. I also accepted an invitation to join the organization of Canadian Conflict of Interest Commissioners.

Many of the calls and emails to my office from members of the public were about matters over which I have no jurisdiction or authority. In most of those instances, the person had misconceived the nature of what I do, been given inaccurate advice, or simply did not know where else to go. Both my Assistant and I try where possible to direct the person to the office in City Hall that is best suited to deal with the particular concerns. We both assume, however, that the number of these calls will diminish with the advent of the 3-1-1 system.

Statistics for the Period September 1, 2004 to December 31, 2005

Formal Complaints

| | | |
|---|-----------|---|
| <i>Received:</i> | <i>21</i> | |
| <i>Settled or Withdrawn:</i> | <i>2</i> | <i>(Report to Council on 1 – issue of jurisdiction)</i> |
| <i>Rejected as Beyond Jurisdiction:</i> | <i>4</i> | <i>(Report to Council on 1)</i> |

| | |
|--|---|
| <i>Rejected as Frivolous or Vexatious, Made in Bad Faith or Without Substance:</i> | 1 |
| <i>Rejected after an Investigation:</i> | 8 |
| <i>Justified:</i> | 1 |
| <i>Still under Investigation (as of December 31, 2005)</i> | 6 ² |
| <i>Complaints by Staff</i> | 4 |
| <i>Complaints by Public</i> | 14 |
| <i>Complaints by Members</i> | 3 (including 1 self-complaint) |
| <i>Members Complained Against</i> | 16 (including 1 self-complaint and 1 complaint against 5) |

References

| | |
|-------------------------------|---|
| <i>By Council</i> | 2 |
| <i>By Committee</i> | 1 |
| <i>By Mayor</i> | 1 |
| <i>Otherwise involving IC</i> | 2 |

Advice to Councillors

| | |
|-------------------------------|----|
| <i>Advice Sought</i> | 42 |
| <i>Members Seeking Advice</i> | 24 |

Citizen and Staff Inquiries

| | |
|----------------|-----|
| <i>Citizen</i> | 139 |
| <i>Staff</i> | 8 |

2 As of the date of this Report, I have completed one more investigation and reported to Council. Final reports are pending in three more (a linked group), one is still being investigated, and one is suspended pending other developments.

Code of Conduct and Complaint Protocol

The foundations of my complaint resolution authority are the Code of Conduct for Members of Council (“Code of Conduct”) and the Council Code of Conduct Complaint Protocol (“Complaint Protocol”).

In the period covered by this Report, a number of issues arose in relation to each of these instruments. Those issues can be classified into four categories: (1) Jurisdiction; (2) Substance; (3) Sanctions; and (4) Procedure.

(1) Jurisdiction

Agencies, Boards and Commissions

Clause XII of the Code of Conduct makes it clear that it applies to non-Members of Council who are members of Agencies, Boards, and Commissions and other emanations of Council, with the exception of purely advisory bodies. However, the terms of the Complaint Protocol are expressed solely in terms of Members of Council. When an issue arose as to whether I could entertain a complaint against a civilian member of a City Agency, I sought a legal opinion from the City Solicitor. That opinion was to the effect that I did not have jurisdiction over such persons.

The impact of this is that, while civilian members of Agencies, Boards and Commissions are bound by the Code of Conduct, there is no formal mechanism in place for anyone to complain that a civilian member of an Agency, Board or Commission has violated that Code. This is an anomaly that should be rectified.

Complaints Against Staff

At present, I clearly do not have any jurisdiction over complaints against Staff. The Bellamy Report recommends that I should have. Indeed, I receive more phone and email preliminary complaints about the conduct of Staff than I do about the conduct of Members of Council. The lack of any jurisdiction over Staff also causes problems in situations where a member of Staff may be implicated in conduct by a Member of Council that has given rise to a complaint or where a complaint against a Member of Council gives rise to a counter-complaint against a member of Staff.

This is a complex issue given the existence already of a number of Protocols regulating Staff conduct and the fact that the employment relations between the City and many of its Staff are the subject of collective bargains under the province’s labour relations legislation. The matter is also further complicated by the creation in Bill 53 of the office of City Ombudsman. At this stage, I am of the view that any movement on this issue should await the enactment and proclamation into force of that legislation and the appointment of the City’s first Ombudsman. There could then be some more informed consideration of whether (and, if so, to what extent) the Integrity Commissioner should have any jurisdiction over allegations of Staff misconduct.

Behaviour of Councillors at City Council

One of the first complaints that I received involved allegations by a member of the public of inappropriate conduct on the part of a Member of Council during the proceedings of City Council. I declined jurisdiction on the basis that the City's procedural by-law placed responsibility on the Chair for maintaining order and preserving the decorum of meetings of Council and its Committees. Despite the fact that Clause VIII of the Code of Conduct obliges Members of Council to conduct themselves with decorum at Council meetings, I determined that this was an area where Council and its Committees were responsible for self-policing. I also indicated that I did not see members of the public as having the right or status to complain about how Members behaved in Council or in Committee. However, I did express concern that the matter needed further attention and made a recommendation to that effect in my report to Council.

Subsequently, I received complaints concerning the behaviour of Councillors towards deputants at Community Council and Council Committee meetings. In each of those instances, I assumed jurisdiction to deal with the complaints of those deputing. My position was that, where the alleged conduct was aimed at someone who was appearing before Council to make representations, I should be prepared to assume jurisdiction to investigate a complaint that the conduct of the Member of Council in question amounted to discreditable conduct in terms of Clause XI of the Code.

Notwithstanding my assumption of jurisdiction in those cases, there is still a lack of clarity on this matter and I would reiterate my recommendation in the report on the original case declining jurisdiction. Indeed, I am still expecting that this will be done as part of the ongoing review of the City's procedural by-law. Once that process is completed, it may become necessary to include, in either the Complaint Protocol or the Code of Conduct, an express provision on the capacity of the Integrity Commissioner to deal with complaints about the behaviour of Members of Council at meetings of City Council and its Committees.

Preamble to the Code of Conduct

The Code of Conduct contains a number of key statements of principle:

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;*
- no Member of Council 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 bear close public scrutiny; and*
- 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.*

I received a complaint that a Member of Council, in the conduct of his private affairs, had misled a Committee of Council and improperly used the influence of his office. I was immediately concerned as to whether I had jurisdiction over these matters and sought independent legal advice. That legal opinion was to the effect that the key statements of principle in the Preamble did not create free-standing Code of Conduct offences. Unless I could find a basis for proceeding to deal with the complaint in one of the specific provisions of the Code of Conduct, I had no jurisdiction to investigate. As there is no provision in the Code of Conduct dealing specifically with the improper use of influence or inappropriate behaviour in the conduct of a Member of Council's private affairs, I declined jurisdiction over the complaint and reported that to Council.

In that report, I did however make it clear that I regarded the lack of a specific provision covering the improper use of influence as a serious gap in the Code of Conduct and recommended that that gap be filled. I also called for consideration whether the Code should deal with misconduct on the part of Councillors in the conduct of their private affairs, particularly in the instance of interactions with the Council of which they are Members.

More generally, this raises the question whether the Code of Conduct should be amended to convert the key statements of principle into stand-alone Code of Conduct offences. While I am certainly of the view that that should happen in the case of improper use of influence, I am equally firm in my view that the principle that calls upon Councillors to serve their constituents in a conscientious and diligent manner should not become a stand alone substantive provision of the Code of Conduct.

As noted already, among the more controversial (with Members of Council) aspects of my jurisdiction has been my investigation of complaints under Clause XI ("Discreditable Conduct") that Members of Council have engaged in harassing, discriminatory and otherwise intemperate behaviour in their interactions with their constituents. Members of Council have complained (in some instances with justification) that the complaint involved no more than a rearguard action by constituents who did not get their way in the political process. While that is certainly no reason for removing Clause XI, what it does illustrate is that a provision making it a Code of Conduct offence for a Councillor not to serve constituents in a conscientious and diligent manner would invite all manner of complaints about the way in which Councillors are performing and the choices that they have made (often from among competing constituent interests) on various issues. While that might sometimes raise integrity concerns in a broader sense, issues of performance (unless they give rise to the more specific concerns identified in Clause XI) should be left to the ballot box. For the Integrity Commissioner to become embroiled as a referee of the way in which Members of Council are fulfilling their responsibilities would risk the credibility of the office. It is not generally appropriate for the Integrity Commissioner to descend into the political fray. I would therefore certainly not recommend converting that key statement of principle into a free-standing ground of complaint.

As for the obligation to obey the laws of the land, that too raises the question whether the Code of Conduct should reach Members of Council in the conduct of their private affairs. In so far as a member of Council violates the law of the land in the course of her or his official duties, that will normally engage the Criminal Code or various provincial offences legislation. In that instance, the Integrity Commissioner would normally defer (as required by the Complaint Protocol) to the criminal or quasi-criminal processes. At this stage, I therefore have no

recommendation to make on including observance of the law of the land as a free-standing Code of Conduct offence.

However, this part of the Preamble also makes reference to Council policies. My sense is that there are many City of Toronto policies that apply to Members of Council. Failure to adhere to those policies should be a Code of Conduct offence. I would therefore recommend an additional clause in the Code of Conduct making that clear. An alternative way of proceeding would be to try to identify all Council policies that bind Members of Council and list them in the Code of Conduct. However, it is my view that this would lead to an excessively complex Code of Conduct. A general or catchall provision should be perfectly adequate.

Withdrawal of a Complaint

My position has been that I have no jurisdiction to proceed once a complaint is withdrawn. Moreover, I think that, in general, this is how it should be. However, there may be rare occasions on which there are serious concerns as to the reasons for the withdrawal of the complaint such as where it may have occurred because of threats or intimidation. In one of my reports, I therefore recommended that the Integrity Commissioner should have an exceptional discretion to continue to investigate a complaint despite its withdrawal.

This also raises two subsidiary issues: whether the Integrity Commissioner should be able to initiate an investigation on her or his own initiative or whether there should be a place for anonymous complaints. The Bellamy Commission Report recommendations speak to the latter. Recommendation 41 would permit the making on anonymous complaints without a supporting affidavit. It is also the case that, at the moment, the Auditor General may initiate an investigation on his own initiative and does take anonymous complaints particularly through the fraud and waste hotline. This is clearly a matter that should be evaluated by the Bellamy Recommendations Steering Committee.

(2) Substance

In the previous section on Jurisdiction, I have noted the recommendation that Council expand the Code of Conduct to include a provision dealing with the Improper Use of Influence and a general catchall clause on adherence to Council policies. Over the course of my first sixteen months, I detected other deficiencies with the existing Code of Conduct.

Gifts and Benefits

Just over a year ago, I filed an interim report with Council recounting my experiences over the first six months of my tenure of the position of Integrity Commissioner. In that report, I identified what seemed to me to be significant problems with the existing provision (Clause II) of the Code of Conduct regulating the receipt of gifts and benefits. In particular, I identified the difficulty of drawing a line between the impermissible receipt of gifts and benefits “connected directly or indirectly with the performance of [a Member of Council’s] duties of office” and the permissible acceptance of gifts and benefits that normally accompany the responsibilities of office and that are received as an incident of protocol, custom or social obligations. This leaves a lot of wiggle room and has led to the existence of a wide range of views among Members of Council as to what is acceptable. Also, the concept of a gift or benefit that is accepted as a

matter of “custom” has the potential to cement existing practices which are now very questionable such as attendance at lavish functions paid for by developers and other private sector organizations with which the City does business.

My recommendation is that the Clause be amended to include (as previously) a reporting obligation for all gifts and benefits above a token amount (\$25), that it also specify an upper limit (\$200(?)), and that the word “custom” be removed. I also believe that the provision should include a clause dealing with ownership of “gifts” and, in particular, to require Members of Council to identify at the time of receiving any gift whether it is intended as a personal gift or one to the City. In the event that it is a gift to the City, that fact should be specified in the registry entry. Any such gift should remain the property of the City even if retained in the Member of Council’s office.

Involvement of Members in Matters Arising in Other Members’ Wards

In my April 2005 interim report, I referred to the matter of Members of Council becoming involved in issues arising in another Member’s Ward. At that point, Council had already referred that issue to me and I reported to Council on that in September 2005. In that Report, which Council adopted, I accepted that there should be no general prohibition on Members of Council intervening on a ward matter in another Member’s ward. However, I did call for the City Manager in consultation with me to prepare a Protocol on how Members of Council should conduct themselves when intervening on any such matter. I also recommended that the standards of any such Protocol be included as a provision in the Code of Conduct. Those standards are, by and large, ones under which the intervening Member of Council should exercise restraint where the Ward Councillor is actively engaged in the matter. They also call for ongoing notification between the intervening Member of Council and the Ward Councillor as to the conduct of the matter in question.

I continue to believe that this would be a desirable course of action.

Lobbying

The current provision on Lobbying (Clause X) simply warns Members of Council to be “vigilant in their duty to serve public interests when faced with lobbying activity”. As I pointed out in my interim report, this is too vague and does not provide a sufficiently precise standard by which Members of Council can sensibly self-regulate their interactions with lobbyists.

The issue of lobbying was, of course, central to many of the recommendations of the Bellamy Commission. Bill 53 also contains provisions for a compulsory lobbyist registrar. Between them, they open the door to a whole new regime respecting lobbying in the City of Toronto. Out of that process will presumably emerge rules applicable to both lobbyists and Members of Council as to what constitutes appropriate behaviour in the conduct of lobbying, and safeguards for ensuring that those standards are observed. When that complex exercise is concluded, I would expect that Clause X will require extensive amendment, amendment which will achieve far greater clarity as to the lines that cannot be crossed without triggering Code of Conduct consequences. Conscious of the fact that these matters are being actively pursued in other contexts, I have no specific recommendations or comments to make at this time. However, I will certainly observe those

developments with interest and reserve the right to intervene in that process to provide my perspectives on any new protocol on lobbying.

Conflicts of Interest

At present, the only direct regulation of conflict of interest on the part of Members of Council is in the provincial Municipal Conflict of Interest Act and various provisions of the Criminal Code. The reach of the Municipal Conflict of Interest Act is confined to pecuniary interests. As well, save for providing general advice to Members of Council, Clause 2(3)(b) of the Complaint Protocol prohibits me from dealing with complaints of conflict of interest under that Act. Members of Council are expected to seek independent legal advice when conflict of interest issues arise and the only vehicle for making a complaint that a Member of Council has violated the Act is an application by an elector to a judge of the Ontario Court (General Division) under sections 8 and 9 of the Act.

There are serious questions as to whether this should be the only vehicle for dealing with allegations of a conflict of interest, particularly as it puts the onus for the carriage of any complaint on individual electors. Given the cost of bringing legal proceedings of this kind (including the almost inevitable hiring of a lawyer), this is a path which few will be willing to pursue.

However, that aside, what is also clear is that modern conceptions of what constitutes a conflict of interest go well beyond purely pecuniary interests, direct or indirect, as specified in the Act. Thus, being involved in decision-making which might result in an advantage to one's friends, business partners and, indeed, a broad range of relatives would at least colloquially today attract the conflict of interest label – and justifiably so.

At various points in her Report (see Recommendations 20-22 and Recommendation 33), Justice Bellamy also warns against creating “apparent” conflicts of interest.

All this suggests that the Code of Conduct is currently deficient in having no provisions dealing with these broader categories of conflict of interest and apparent conflict of interest. Thus, at the very least as part of the response to the Bellamy Commission Report, the Code of Conduct should be expanded to deal with this problem and proscribe a broader range of conflict than is currently covered by the Municipal Conflict of Interest Act. At an appropriate moment, assuming that this will not be accomplished under Bill 53, Council should be proactive in trying to secure amendments to the current legislation to expand its definition of conflict of interest and to provide for mechanisms other than or in addition to an application to a judge of the Court of Justice (General Division) for the bringing of conflict of interest complaints or otherwise raising conflict of interest issues. Also, to the extent that the City maintains its current position that the City Solicitor and the Integrity Commissioner should not be giving advice to Members of Council on conflict of interest issues, consideration should be given to creating a fund on which Members may draw when they need advice. As I have pointed out in my April 2005 Interim Report, when Members of Council have to pay to obtain legal advice on such matters, there will be tendency to avoid that by either declaring a conflict too readily or becoming careless as to one's responsibilities. Neither is desirable in the public interest.

(3) Sanctions

Neither the Code of Conduct nor the Complaint Protocol specifies the nature of the sanctions that Council might impose for a violation of the Code of Conduct. Clause 3(5) of the Complaint Protocol talks of the Integrity Commissioner issuing a report to Council that includes “recommended corrective action”. Clause 3(6) then goes on to provide that the recommended corrective action “must be permitted by law and shall be designed to ensure that the inappropriate behaviour or activity does not continue”. However, that begs the critical question: What kinds of corrective action does the law permit Council to impose on one of its Members who has violated the Code of Conduct?

There seem no clear answers to that question. Indeed, I have heard doubts expressed as to whether Council has the power to even censure, let alone suspend or expel one of its Members. I was hoping that Bill 53 would alleviate these problems by including specific sanctioning powers. Indeed, it does so in its present form but disappointingly refers to only two sanctions and then in such a way as to indicate that they are exclusive and that the City does not have any further authority to discipline. The two sanctions contemplated by the new Act are a reprimand and a loss of remuneration for up to ninety days. Other possibilities such as a direction to repay money or compensate the City, or to apologize are seemingly excluded as is loss of other privileges including membership on or chairing of a Council Committee or Agency Board or Commission. The new Act also explicitly withholds from the City the power to enact a by-law making violation of the Code of Conduct an offence.

Assuming that is how the Bill remains, the situation with respect to sanctions will have improved somewhat with the express recognition of two sanctions. However, the range is quite limited and this perhaps suggests a situation where the major impact of any finding of a violation of the Code of Conduct will in most instances continue be the attendant publicity and the potential for repercussions at the ballot box.

(4) Procedure

As mentioned earlier, one of the more controversial aspects of my jurisdiction has been my handling of complaints under Clause XI that a Member of Council has engaged in discreditable conduct by failing to treat a citizen fairly or by engaging in harassing and discriminatory conduct. At the July 2005 meeting of Council, this gave rise to a debate as to whether the threshold for the Integrity Commissioner to conduct a formal investigation was too low. There were also questions as to the obligation of the Integrity Commissioner to report to Council on all complaints whether justified or not. In that context, Council passed a motion referring these matters to a special Advisory Task Force consisting of Members of Council and the Integrity Commissioner.

That Advisory Task Force evaluated the concerns that had given rise to its creation and issued a report in December making recommendations for changes to the Complaint Protocol. Those recommendations involved changes to the Complaint Protocol emphasising the right of the Integrity Commissioner to decline to investigate a complaint or to discontinue an investigation at any time if the complaint was seen to be frivolous, vexatious, made in bad faith, or otherwise without substance. The Report also recommended that the Integrity Commissioner not be obliged to report to Council on complaints that he has dismissed either after a full investigation or

because the complaint was frivolous, vexatious, not made in good faith, or otherwise without substance. Rather, the decision to report should be a matter of discretion for the Integrity Commissioner and reserved for exceptional circumstances. (Ultimately, at its April 2006 meeting, City Council adopted the Report and the changes to the Complaint Protocol are now in place.)

One issue of procedure that was not before the Advisory Task Force was the troubling problem of access to my reports. On a number of occasions, concerns about the possible application of the privacy provisions of the Municipal Freedom of Information and Protection of Privacy Act meant that I filed two versions of a report on a complaint. In one version, all information from which individuals might be identified is removed, and this will be for consideration in open Council. The second and fuller version that either contains names or information from which identification is readily possible will go to Council in camera. Making the judgment as to when that is appropriate is not easy but I take my guidance in these matters from the Director of Corporate Access & Privacy. Provisions in Bill 53 may well alter the position and allow much more scope legally for the consideration of full, unexpurgated reports in open Council.

Samples of Advice Provided

Question: *Am I permitted to hire a relative of another Member of Council to work in my office?*

Answer: *No. The June 2000 Council policy on Members of Council hiring staff prevents not only Members of Council hiring their own relatives (as defined) but also hiring the relatives of other Members of Council.*

Question: *Am I permitted to accept an invitation to an event in another country when the organizers are paying some or all of my expenses including the cost of flights and accommodation?*

Answer: *It depends. If you are attending the event as a representative of the City of Toronto and if the inviting body is governmental in nature, the payment of your expenses will be permissible under the exceptions to the ban on the receipt of gifts and benefits found in Clause II of the Code of Conduct. Depending on the circumstances, it will amount to “food, lodging, transportation and entertainment” provided by a foreign government within a foreign country” or benefits that “normally accompany the responsibilities of office and are received as an incident of protocol, custom or social obligations”. On the other hand, if the invitation comes from the private sector and the inviting organization is doing business with or seeking to do business with the City, the payment of your expenses would be inappropriate though there is generally no problem with accepting the invitation and paying your own expenses.*

Question: *Do the obligations imposed on Staff by the December 2004 Staff Protocol for Notifying Councillors apply to the staff of members of Council?*

Answer: *Yes.*

Question: *May I use my expense budget to make a contribution towards the production of a newsletter by a community group?*

Answer: Yes. It is a legitimate office expense under the heading "Sponsorships and Donations". However, there is an annual limit of \$600 per organization and it is inappropriate for your office to pay directly any bills associated with the newsletter.

Question: I am concerned as to whether I have a conflict of interest as defined in the Municipal Conflict of Interest Act? Will the City pay my account for seeking legal advice and, if not, can I charge the lawyer's fees against my office expenses?

Answer: The City will not reimburse you for the cost of seeking advice and you cannot charge the fees to your office account. You must pay the account out of your own pocket.

Question: If I receive a gift or benefit, am I obliged to inform anyone even if it comes within the range of gifts and benefits that are permissible under Clause II of the Code of Conduct?

Answer: No. There is currently no registry for gifts and benefits. However, if you are uncertain as to whether the gift or benefit is permissible, it is advisable to seek guidance in advance from the Integrity Commissioner.

Budget

The accounts for my office are set out in Appendix 1. They are broken down into two periods: September – December 2004 and the 2005 calendar and City fiscal year.

Council allocated \$90,000 for the first four months of operation of my office. Expenditures totalled \$50,989.75, meaning there was a surplus of \$39,010.25. Of those expenditures, \$45,632.35 were salary items and \$5,357.35 non-salary items (and primarily the purchase of equipment for my office).

The budget for 2005 was \$200,000. Expenditures totalled \$157,135.69, leaving a surplus of \$42,864.31. Once again, salary items (wages for my Assistant and me) predominated and totalled \$152,052.55. Non-salary items were \$5,083.14.

These figures might suggest that Council over-budgeted for the operations of the office. However, I should point out again that, in that first sixteen-month period, there were no major investigations requiring the hiring of investigators or the incurring of associated expenses. As well, I sought independent legal advice on only one occasion. It is, of course, the nature of the position that the timing of complaints and investigations is quite unpredictable. It is also the case that, in the event of a complicated, time-consuming investigation requiring the deployment of external resources, the budget allocated to the office could very quickly be exhausted.

Conclusion

During the first sixteen months of my appointment as Integrity Commissioner, I devoted a lot of time to establishing the office both operationally and as a resource in which the various stakeholders would have confidence. Save for the fulfillment of my educational mandate, I am reasonably confident that, at least from an operational perspective, the office is functioning well. I am also encouraged by the extent to which Members of Council, during that period, were prepared to see my office as a potentially valuable source of advice on their obligations under

the Code of Conduct. The fact that, during the period under review, I made only one formal finding of violation of the Code of Conduct might also be seen as evidence of a culture among Members of Council that treats conformity with ethical standards as a matter of high priority. However, the random nature of the formal complaints that I investigated and the statistically insignificant nature of the sample should caution against the use of this fact as a strong indicator. Assurance that all is well may have to await a longer period of experience with the investigation and complaint jurisdiction.

As I have indicated in some detail in this Report, I have a number of concerns with and questions about the Code of Conduct and Complaint Protocol under which I operate. As the City continues to assess its responses to the Bellamy Commission, I am hoping that these concerns will attract attention as a significant element in the implementation exercise.

It has been a privilege and a challenge to be the City's first Integrity Commissioner. In meeting the challenge, I have received all the assistance from Staff and Members of Council that I could reasonably have hoped for. If that level of cooperation continues, I have every confidence that the office will meet the expectations that Council expressed in creating it, and that it will make a significant contribution to the maintenance and furtherance of ethical behaviour among Members of Council.

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Appendix 1 – Budget and Expenditures for Fiscal Years 2004 and 2005

*Integrity Commissioner's
Office
Breakdown of expenses*

| | <i>Budget</i> | <i>Actual</i> | <i>Funds Available</i> |
|---------------------------------------|---------------|---------------|----------------------------|
| <hr/> | | | |
| <i>September to December 2004</i> | | | |
| <hr/> | | | |
| <i>Salaries & Benefits</i> | - | 45,632.45 | (45,632.45) |
| <hr/> | | | |
| <i>Non-salary:</i> | | | |
| <i>Materials & Supplies</i> | - | 507.93 | (507.93) |
| <i>Equipment</i> | - | 3,853.44 | (3,853.44) |
| <i>Services & Rents</i> | 90,000.00 | 1.35 | 89,998.65 |
| <i>Interdepartmental charges</i> | - | 994.58 | (994.58) |
| <i>Total</i> | 90,000.00 | 5,357.30 | 84,642.70 |
| <hr/> | | | |
| <i>Total</i> | 90,000.00 | 50,989.75 | 39,010.25 |
| <hr/> | | | |
| <i>January to December 2005</i> | | | |
| <hr/> | | | |
| <i>Salaries & Benefits</i> | - | 152,052.55 | (152,052.55) |
| <hr/> | | | |
| <i>Non-salary:</i> | | | |
| <i>Materials & Supplies</i> | 5,000.00 | 1,503.50 | 3,496.50 |
| <i>Equipment</i> | 3,000.00 | - | 3,000.00 |
| <i>Services & Rents</i> | 187,000.00 | 2,932.00 | 184,068.00 |
| <i>Interdepartmental charges</i> | 5,000.00 | 647.64 | 4,352.36 |
| <i>Total</i> | 200,000.00 | 5,083.14 | 194,916.86 |
| <hr/> | | | |
| <i>Total</i> | 200,000.00 | 157,135.69 | 42,864.31 |
| <hr/> | | | |

APPENDIX III:

**Report of Integrity Commissioner to Bellamy Recommendations
Steering Committee, July 5, 2006**

Date: July 5, 2006

To: Members of Bellamy Recommendations Steering Committee

From: David Mullan, Integrity Commissioner

Cc: John Elvidge, Martin Herzog

Subject: Code of Conduct and Complaint Protocol

Further to my report to the Committee of May 8, 2006, what follows are the items on which I contemplate developing proposals for changes to the Code of Conduct for Members of Council (“Code of Conduct”) and its associated Council Code of Conduct Complaint Protocol (“Complaint Protocol”):

1 JURISDICTION

a *Members of ABCs* The Code of Conduct applies to members of ABCs (Clause XII). The Complaint Protocol does not give the Integrity Commissioner (“IC”) authority over members of ABCs. Section 159(1) of the City of Toronto Act, 2006 (“the Act”) makes the IC responsible for the code of conduct applicable to “local boards (restricted definition)”. Both the Code of Conduct and the Complaint Protocol need to reflect the provisions of the Act.

Proposal: *Bring back amendments attending to necessary changes.*

b *Decorum at Council* (a) While the Code of Conduct requires decorum of Members of Council at meetings of Council and Committees (Clause VIII), policing decorum at the moment is the sole responsibility of the Chair. This issue is part of the Procedural By-law revision process. I have recommended that primary responsibility for maintaining order remain with the Chair (Speaker) but that Council and/or the Chair/Speaker have authority to refer such issues to the IC for report to Council and recommendation for sanction. (b) I have also taken the position that, notwithstanding the usual role of the Chair, deputants before Standing Committees and Community Councils do have the right to complain to the IC against Councillors for not treating them appropriately during a deputation. This should be made explicit in the Complaint Protocol.

Proposal: (a) Consult with Committee revising procedural by-law
(b) Consult with Committee revising procedural by-law

c *Staff (including political staff)* The Bellamy Commission Report (“Bellamy”) recommends extending the IC’s jurisdiction to include complaints against members of staff (Recs. 41-48). In providing for the office of IC, the Act does not mention jurisdiction over staff; only Members of Council and local boards (restricted definition). There is a legal question

whether the City acting under its general powers could extend the IC's jurisdiction to cover members of staff. There is also the question whether it is in fact appropriate to move in that direction. Because complaints against Members of Council often implicate members of their personal or political staff, there is certainly an argument to be made for extending the IC's jurisdiction to cover them.

Proposal: *Further study in light of Committee discussion and opinion from City Solicitor*

2 OFFENCES

I New

a Abuse of Influence; Failure to Adhere to Council Policies; Conduct in Relation to Private Affairs *The statements of principle in the Code of Conduct are not part of the body of the Code of Conduct and therefore do not provide a basis for complaints against Members of Council. That should be changed. The Code of Conduct should have an abuse of influence provision and a clause making it an offence to disregard Council policies. Consideration should be given to whether Clause XI ("Discreditable Conduct") should ever extend to Members of Council in their "private" capacities. The Code of Conduct should not include a provision making it an offence to fail to serve one's constituents in "a conscientious and diligent manner".*

Proposal: *Abuse of influence – Bring back amendments making necessary change
Failure to adhere to council policies – Bring back amendments making necessary change
Conduct in private capacity – Further study in light of Committee discussion
Serving in conscientious and diligent manner – No action; leave in preamble*

b Conflict of Interest and Perceptions of Conflict of Interest *Clauses I and XIII of the Code of Conduct make it clear that Members of Council are bound by the Municipal Conflict of Interest Act. However, these provisions and the Complaint Protocol are equally clear that the IC has no jurisdiction over complaints of conflict of interest in violation of that Act. The procedure provided for under that Act must be followed. However, that Act is limited to direct and indirect pecuniary interests on the part of the Councillor and a narrow band of relatives. Bellamy recommends that conflict of interest (and perceptions of conflict of interest) in a much broader sense become part of any Code of Conduct (Recs. 20-22). She also provides examples (Recs. 23-30) of conflict of interest and preferential treatment in this broader sense (e.g. appearing to favour the interests of family, friends and business associates). The Code of Conduct should include a provision about conflicts of interest (including apparent conflicts of interest) though, at this stage, that probably should not include those traditional conflicts governed by the Municipal Conflict of Interest Act – that raises questions of Council's legal capacity.*

Proposal: *Further study in light of Committee discussion*

c Procurement and Planning *There are Council policies which set limits on the extent to which Members of Council are permitted to be involved in procurement and planning matters. Bellamy makes strong recommendations with respect to Members of Council involvement in procurement. If I.a is adopted and it becomes an offence to violate Council policies, in one*

sense, both planning and procurement will have been taken care of. However, there is a question whether, because these are two domains where ethical standards are so critical, they should have their own specific provision or provisions in the Code of Conduct.

Proposal: *Further study in light of Committee discussion*

d ***Involvement in a Ward Matter in Another Member's Ward*** *I have recommended that this be permitted but carefully regulated. Should the regulation be part of the Code of Conduct? If not, and it is dealt with by way of specific policy, should the violation of that policy also be highlighted by way of specific provision in the Code of Conduct or left to be dealt with under the general violation of Council policy provision?*

Proposal: *Further study in light of Committee discussion*

e ***Retaliation and Obstruction*** *The Code should contain an express provision making it an offence to retaliate in any way against someone for filing a complaint with the IC and also to obstruct someone in the filing of a complaint or the IC in the performance of his duties. Bellamy (Rec. 43) deals specifically with the latter recommending that the sanctions for withholding cooperation be the same as those for the violation of the other substantive provisions of the Code of Conduct.*

Proposal: *Bring back amendments adding necessary provision*

II ***Modifications to Existing Provisions***

a ***Gifts and Benefits*** *Clause II covering gifts and benefits should be tightened. Among other changes, even permissible gifts and benefits above a certain amount should have to be reported to the IC (e.g. any over \$500 or more than \$500 from any one source in a particular year). Gifts over a certain amount should be impermissible. Members of Council should have a duty to clarify whether a gift is a personal one or one to the CITY. The exemption for gifts accepted as an incident of "custom" should be removed.*

Proposal: *Further study in light of Committee discussion*

b ***Lobbying*** *Clause X of the Code of Conduct (Conduct Respecting Lobbyists) will need to be amended to reflect whatever standards of conduct the Committee recommends with respect to Member of Council interaction with lobbyists in general and unregistered lobbyists in particular.*

Proposal: *Await finalization of Committee's work on lobbyist registry*

c ***Discreditable Conduct*** *Clause XI of the Code of Conduct (Discreditable Conduct) should be amended to substitute the following for the word "fairly": "appropriately and without abuse, bullying or intimidation" (Bellamy, Rec. 18). "Fairly" invites complaints about the substance of Councillors' positions on issues and the choice of one constituent's interests over another. Such complaints are not properly part of an integrity regime and belong more appropriately to the Ombudsman created by the new Act.*

Proposal: *Further study in light of Committee's discussion*

3 SANCTIONS

Section 160(5) of the new Act permits Council to impose two sanctions on a Member who has violated the Code of Conduct: a reprimand or suspension of remuneration for a period of up to 90 days. Bellamy (Rec. 46) supported a wider range of sanctions including "public reprimands, public apologies, expulsion from one or more committee meetings, removal from committee posts or committee chair positions, expulsion from one or more Council meetings, or, at the high end of the spectrum, a fine or a declaration of a vacancy in the councillor's seat." To this list, one could add repayment or reimbursement of money and return of property in kind or in money. Once again, however, there is a legal question whether the general powers of Council under the Act permit expansion of the list of sanctions. In any event, the Code of Conduct or the Complaint Protocol should contain a provision repeating the possible sanctions.

Proposal: *Further study in light of Committee's discussion and opinion from City Solicitor.*

4 PROCEDURE

a Continuing Jurisdiction over Withdrawn Complaints *The IC loses jurisdiction when a complaint is withdrawn. There should be discretion to continue to investigate. This is necessary to guard against situations where there may have been inappropriate pressure or inducements offered for the withdrawal and also where there is an overarching public interest that the investigation should proceed to a conclusion.*

Proposal: *Further study in light of Committee's discussion*

b Anonymous Complaints *Bellamy recommends (Rec. 41) that the IC be entitled to take anonymous complaints. The Auditor General currently does this through the Fraud and Waste Hotline. I am somewhat reluctant to move in that direction though a possible compromise may be to provide that, in exceptional cases, the IC can commence an investigation on her or his own initiative.*

Proposal: *Further study in light of Committee's discussion*

c Affidavit *Linked to the recommendation about anonymous complaints is a further recommendation that the Complaint Protocol's requirement that a complaint be commenced by formal affidavit be eliminated. In approving changes recently to the Complaint Protocol, Council in fact strengthened the affidavit requirement by requiring that it contain a warning as to the consequences of swearing a false affidavit. This was to meet concerns about the making of vexatious, frivolous or bad faith complaints, an issue that also concerned Bellamy (Rec. 44). To the extent that formality discourages that kind of complaint, I am reluctant to remove the affidavit as a requirement.*

Proposal: *Further study in light of Committee's discussion*

d Other Complaint Mechanisms Clause 2(3) of the Formal Complaint Procedure of the Complaint Protocol makes it clear that the IC must yield to other complaint mechanisms both external to the City (the Courts, the Municipal Conflict of Interest Act) and internal to the City (e.g. Director, Corporate Access and Privacy, with respect to violations of Clause III - breaches of the Municipal Freedom of Information and Protection of Privacy Act). Ceding to internal complaint mechanisms raises a number of questions. If the other complaint mechanism finds a violation of the Code of Conduct, by what process does this come to the attention of Council and how do the Act's sanction provisions get triggered? There has also been some suggestion that the IC should replace at least one internal mechanism – the use of an external consultant in cases involving staff complaints of Ontario Human Rights Code and other non-Code discrimination and harassment against Members of Council (Clause XI of the Code of Conduct).

Proposal: *Further study in light of Committee's discussion and consultation with City Manager, City Solicitor, and Human Resources over issue of staff complaints of discrimination and harassment.*

5 MISCELLANEOUS

Clause XIII of the Code of Conduct specifies the Mayor as the person to whom written complaints of violation should be directed. I assume that has been overtaken by the provisions of the Complaint Protocol and should be removed.

Proposal: *Bring back amendments making adjustment to text of Code of Conduct*

6 SUMMARY OF PROPOSALS

a Bring back amendments attending to necessary changes to Code of Conduct

- i Jurisdiction over ABCs*
- ii Inclusion of provision on abuse of influence*
- iii Inclusion of provision on failure to adhere to Council policies*
- iv Inclusion of provision on retaliation and obstruction*
- v Removal of part making reference to written complaint to Mayor*

b Further study in light of Committee discussion

- i Jurisdiction over staff (including political staff)*
- ii Inclusion of provision on conflict of interest (and perceptions thereof)*
- iii Inclusion of provisions on inappropriate involvement in procurement and planning*
- iv Inclusion of provision on involvement in Ward matter in another member's Ward*
- v. Revision of gifts and benefits rule*
- vi. Revision of discreditable conduct rule*
- vii. Jurisdiction over withdrawn complaints*
- viii. Permitting anonymous complaints*
- ix. Removal of requirement that complaints be commenced by way of affidavit*

c ***Consultation with Others***

- i* *Jurisdiction over decorum at Council – Committee revising procedural by-law*
- ii* *Jurisdiction over behaviour towards deputants at Community Councils and Standing Committees – Committee revising procedural by-law*
- iii* *Jurisdiction over staff (including political staff) – City Solicitor*
- iv* *Sanctions – City Solicitor*
- v* *Jurisdiction over discrimination and harassment complaints by staff – City Manager, City Solicitor, Human Resources*

d ***Miscellaneous***

- i* *Provision on serving in conscientious and diligent manner – No change*
- ii.* *Provision on lobbying – await finalization of Committee’s work on this part of mandate*

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(Appendix IV to the report (September 21, 2006) from the Integrity Commissioner is a copy of the Integrity Commissioner’s report (August 30, 2006) addressed to the Bellamy Recommendations Steering Committee, which is already contained in this Clause.)