



INTEGRITY COMMISSIONER REPORT ACTION REQUIRED

Report on Code of Conduct Complaint Protocol

Date:	July 9, 2007
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

This Report makes recommendations for revision of the Code of Conduct Complaint Protocol (“Complaint Protocol”). The principal reasons for this are the need to harmonize the Complaint Protocol with various provisions in the *City of Toronto Act, 2006* as well as motions passed by Council at its meeting of February 5, 6, 7, and 8, 2007, respecting legal costs incurred during an inquiry by the Integrity Commissioner and any subsequent judicial review proceedings..

It also recommends other adjustments to reflect current practice under and the Integrity Commissioner’s experience with the existing Complaint Protocol as well as to simplify the Complaint Protocol’s language.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. The Code of Conduct Complaint Protocol be revised to include the following:
 - a. Providing that the Integrity Commissioner may participate in the informal complaint resolution process with the consent of the parties;
and

- b. Revising the cost payment provisions to clarify that the tariff in the Indemnification Policy for Members of Council also applies to the payment of legal costs of a local board member or a complainant; that costs paid in advance are not subject to repayment based on the outcome of the inquiry; and that any denial of costs based on the Integrity Commissioner's conclusion does not apply if the conclusion is overturned on judicial review.
2. The revised Code of Conduct Complaint Protocol attached to this report be approved

FINANCIAL IMPACT

This recommendation has no financial implications, beyond those resulting from Council's direction at its meeting of February 5, 6, 7 and 8, 2007 to amend the costs provisions of the Complaint Protocol in accordance with the principles that it identified.

DECISION HISTORY

At its September 25, 26, 27 and 28, 2006 Meeting, Council approved various changes to the 1999 *Code of Conduct for Members of Council* ("Code of Conduct"): http://www.toronto.ca/city_council/pdf/members_code_conduct.pdf. Those changes were in response to the terms of the *City of Toronto Act, 2006* and the *Report of the Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry* ("Bellamy Commission").

However, Council made the coming into effect of the revisions to the Code of Conduct conditional on incorporation into the Complaint Protocol of various changes with respect to legal costs. (As well, other recommendations for change to the Code of Conduct were made subject to further reports. Finally, Council required the Integrity Commissioner to report back to it on the implementation of the changes, their impact, and whether further changes to the Code of Conduct were necessary. Work on these other matters is still in progress and will be the subject of an omnibus report some time in the fall.)

At its Meeting of February 5, 6, 7, and 8, 2007, Council approved (Item CC2.5, as amended and adopted <http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/cc2.5.pdf>) the various changes to the legal costs provision of the Complaint Protocol. As a result of Council's conditions being met, the Consolidated Code of Conduct came into effect on February 8, 2007, the last day of that meeting of Council.

This report is in response to Council authorizing at its Meeting of February 5, 6, 7 and 8, 2007, the City Manager, in consultation with the Integrity Commissioner, the City Solicitor, and the Deputy City Manager and Chief Financial Officer to revise the Code of Conduct, Complaint Protocol and indemnity policies, as necessary, to incorporate various amendments approved at that meeting and any other technical revisions to reflect the inclusion of members of local boards in these policies, to post the revised policies on the

applicable City and Integrity Commissioner websites, and to file a copy with the City Clerk.

ISSUE BACKGROUND

As a consequence of the passage and coming into effect of the *City of Toronto Act, 2006*, it became necessary to make changes to the Complaint Protocol to harmonize it with various provisions of Part V of that Act.

At its meeting of February 5, 6, 7 and 8, 2007, Council also approved new provisions for inclusion in the Complaint Protocol dealing with entitlement to legal costs with respect to both inquiries by the Integrity Commissioner and any subsequent judicial review application.

The Revised Complaint Protocol attached to this Report incorporates these changes. It also includes other revisions, some reflecting the Integrity Commissioner's experience with the operation of the existing Complaint Protocol and others of a technical nature.

COMMENTS

As recently as its meeting of April 25, 26 and 27, 2006, Council approved amendments to the Complaint Protocol in response to recommendations from a committee it appointed to evaluate the original version. However, with the enactment and coming into force on January 1, 2007 of the *City of Toronto Act, 2006*, further changes became necessary.

In particular, amendments were needed to extend the operation of the Complaint Protocol to members of local boards (restricted definition) who are now subject to the Integrity Commissioner's jurisdiction. As well, the Complaint Protocol had to incorporate the additional investigative powers that the *City of Toronto Act, 2006* conferred on the Integrity Commissioner (including the authority to conduct an inquiry under the terms of the province's *Public Inquiries Act*) as well as the confidentiality provisions of that Act.

As already outlined, Council itself conditioned the coming into effect of the Consolidated Code of Conduct on the incorporation into the Complaint Protocol of enhanced cost provisions for the legal expenses of members subject to an Integrity Commissioner's inquiry including those of subsequent judicial review proceedings.

The revised Complaint Protocol now before Council for approval not only responds to these imperatives but also includes technical amendments (including simplification of language) and updates to reflect current practices (such as an amendment to set ninety days from the making of a complaint as the expected but not mandatory time limit for an Integrity Commissioner inquiry). Other new or amended provisions in the revised Complaint Protocol presented for Council approval include the following:

- Authority for the Integrity Commissioner to participate in the informal process with the consent of the parties;

- Clarification that the tariff in the Indemnification Policy for Members of Council also applies to the payment of any legal costs under the Complaint Protocol;
- Provision that, if costs are payable in advance to assist the Integrity Commissioner in an inquiry, those costs are not subject to repayment based on the outcome of the inquiry; and
- Clarification that the provisions denying costs based on the Integrity Commissioner's conclusion do not apply if the conclusion is overturned on judicial review.

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SIGNATURE

David J. Mullan, Integrity Commissioner

ATTACHMENTS

Revised Council Code of Conduct Complaint Protocol

ATTACHMENT



COUNCIL CODE OF CONDUCT COMPLAINT PROTOCOL

(Authority: Clause No.4 of Report No.2 of the Policy and Finance Committee, March 1, 2 and 3, 2004)

(Amended: Clause No.1 of Report No.3 of the Policy and Finance Committee, held on April 25, 26 and 27, 2006; Item CC2.5 as adopted and amended by Council at its meeting held on February 5, 6, 7 and 8, 2007; Item CC .5 as adopted by Council at its meeting held on July 16 and 17, 2007).

PART A: INFORMAL COMPLAINT PROCEDURE

Individuals (for example, City employees, members of the public, members of Council or local boards (restricted definition), or organizations (including local boards (restricted definition) who have identified or witnessed behaviour or an activity by a member of Council or a local board (restricted definition) that they believe is in contravention of the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* (the “Code of Conduct”) may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the member that the behaviour or activity contravenes the Code of Conduct;
- (2) encourage the member to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (4) tell someone else (for example, a senior staff member or an officer of the organization) about your concerns, your comments to the member and the response of the member;

- (5) if applicable, confirm to the member your satisfaction with the response of the member; or, if applicable, advise the member of your dissatisfaction with the response; and
- (6) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with another applicable judicial or quasi-judicial process or complaint procedure.

Individuals and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code of Conduct. With the consent of the complaining individual or organization and the member, the Integrity Commissioner may be part of any informal process. However, it is not a precondition or a prerequisite that those complaining pursue the informal complaint procedure prior to pursuing the formal complaint procedure in Part B.

PART B: FORMAL COMPLAINT PROCEDURE: Integrity Commissioner

Statutory Authority:

Under section 160 of the *City of Toronto Act, 2006*:

- [a] City Council (“Council”), a member of council or a member of the public may request the Integrity Commissioner to conduct an inquiry about whether a member of council or of a local board (restricted definition) has contravened the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* (the “Code of Conduct”); and
- [b] a local board (restricted definition) or a member of a local board (restricted definition) may request the Integrity Commissioner to conduct an inquiry about whether a member of the local board (restricted definition) has contravened the Code of Conduct.

Requests for Inquiries ss.1-2

Application of Part
B to Review
Request

1. (1) All the provisions of this Part apply to a request for an inquiry by an individual or an organization other than Council or a local board (restricted definition).
- (2) Sections 5 to 13, except clause 6(1)(b) and subsection 7(3), apply to a request for an inquiry by Council or a local board (restricted definition).

Complaint

2. (1) A request for an investigation of a complaint that a member has contravened the Code of Conduct (the “complaint”) shall be in writing.
- (2) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization).
- (3) A complaint shall set out reasonable and probable grounds for the allegation that the member has contravened the Code of Conduct and include a supporting affidavit that sets out the evidence in support of the complaint.

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

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

Initial Classification by Integrity Commissioner s. 3

File with Clerk

3. (1) The request shall be filed with the City Clerk who shall

forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies as described in subsection (3).

Deferral

- (2) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.
- (3) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall instruct the City Clerk to advise the complainant in writing as follows:
 - (a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the appropriate police force;
 - (b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
 - (c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Director of the Corporate Access and Privacy office for review;

- (d) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
- (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

Reports

- (4) The Integrity Commissioner may report to Council or the local board (restricted definition) that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- (5) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

Integrity Commissioner Investigation ss.4-10

Refusal to Conduct Investigation

- 4. (1) If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation
- (2) Other than in exceptional circumstances, the Integrity Commissioner will not report to Council or a local board (restricted definition) on any complaint described in

subsection 4(1) except as part of an annual or other periodic report.

Investigation 5. (1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under Section 4, the Commissioner shall investigate and may attempt to settle the complaint.

Public Inquiries Act (2) Under subsection 160(2) of the *City of Toronto Act, 2006*, the Integrity Commissioner may elect to investigate a complaint by exercise of the powers of a commission under Parts I and II of the *Public Inquiries Act*.

(3) When the *Public Inquiries Act* applies to an investigation of a complaint, the Integrity Commissioner shall comply with the procedures specified in that Act and this Complaint Protocol, but, if there is a conflict between a provision of the Complaint Protocol and a provision of the *Public Inquiries Act*, the provision of the *Public Inquiries Act* prevails.

6. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:

(a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten days; and

(b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days.

(2) If necessary, after reviewing the written materials, the

Integrity Commissioner may speak to anyone relevant to the Complaint, access and examine any of the information described in subsections 160 (3) and (4) of the *City of Toronto Act, 2006*, and may enter any City or local board (restricted definition) work location relevant to the complaint for the purposes of investigation and settlement.

Opportunity to
Comment

(3) The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member has had reasonable notice of the basis for the proposed finding and any recommended sanction and an opportunity either in person or in writing to comment on the proposed finding and any recommended sanction.

Interim Reports

(4) The Integrity Commissioner may make interim reports to Council where necessary and as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

Final Report

7. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the making of the complaint.

(2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council or the local board (restricted definition), or both, outlining the findings, the terms of any settlement, or recommended corrective action.

(3) Where the complaint is dismissed, other than in exceptional circumstances, the Integrity Commissioner shall not report to Council or the local board (restricted definition) except as part of an annual or other periodic report.

Lawful recommendations	(4) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.
Member not Blameworthy	8. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.
Copies	9. The City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned.
Report to Council	10. The City Clerk shall process the report for the next meeting of Council or the local board (restricted definition), or both.
Council or Local Board Review ss.11 - 13	
Duty of Council Local Board	11. Council or the local board (restricted definition) shall Board consider and respond to the report within 90 days after the day the report is laid before it.
Payment of Costs	12. (1) Subject to this section, claims for reimbursement by a member of Council for costs under this section shall be processed under the Indemnification Policy for Members of Council and the tariff as set out in the policy, as amended, applies to all claims for reimbursement under this section. (2) A complainant and a member who are parties to a complaint under this procedure shall each be reimbursed

for actual and reasonable legal and related expenses up to a maximum of:

- (a) \$5,000; or
- (b) \$20,000, if the Integrity Commissioner has elected to investigate the complaint by exercise of the powers of a commission under Parts I and II of the *Public Inquiries Act*.

(3) In the case of an application under the *Judicial Review Procedure Act* for judicial review of actions taken on a complaint against a member of council or a local board (restricted definition) by the Integrity Commissioner, Council or a local board (restricted definition):

- (a) where a member made the judicial review application, the member is eligible for reimbursement of legal costs, including additional legal costs in a successful application, that are not covered by the costs awarded by the court, up to a maximum of \$20,000.
- (b) a member may apply for reimbursement of the legal costs of intervention in a judicial review application where the member's interests are at stake, up to a maximum of \$20,000.

(4) Council may consider the reimbursement of costs above the limit in subsections (2) and (3) on a case by case basis.

(5) Costs may be provided in advance in an investigation, if the Integrity Commissioner is of the opinion that the use of a lawyer by one or more of the parties would facilitate the carrying out of the investigation, and subsections (6)

and (7) do not apply to the advance costs paid under this subsection.

(6) Costs shall only be reimbursed under this section to the complainant, if the Integrity Commissioner concludes that the complaint is not frivolous, vexatious or made in bad faith and the Integrity Commissioner's conclusion is not overturned on judicial review.

(7) Costs shall only be reimbursed under this section to the member, if the Integrity Commissioner concludes that there has been no contravention of the Code of Conduct by the member or any contravention was committed through inadvertence or an error judgment made in good faith, and the Integrity Commissioner's conclusion is not overturned on judicial review.

Confidentiality

13. (1) A complaint will be processed in compliance with the confidentiality requirements in sections 161 and 162 of the *City of Toronto Act, 2006*, which are summarized in the following subsections.

(2) The Integrity Commissioner and every person acting under her or his instructions shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of any investigation except as required by law in a criminal proceeding or in accordance with the provisions of Part V of the *City of Toronto Act, 2006*.

(3) All reports from the Integrity Commissioner to Council or a local board (restricted definition) will be made available to the public.

(4) Any references by the Integrity Commissioner in an annual or other periodic report to a complaint or an investigation shall not disclose confidential information

that could identify a person concerned.

- (5) The Integrity Commissioner in a report to Council or a local board (restricted definition) on whether a member has violated the Code of Conduct shall only disclose such matters as in the Integrity Commissioner's opinion are necessary for the purposes of the report.