



**INTEGRITY  
COMMISSIONER REPORT  
ACTION REQUIRED**

**Amendments to the Code of Conduct Complaint  
Protocol under Members Code of Conduct**

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|--------------------------|------------------------|
| <b>Date:</b>             | January 29, 2007       |
| <b>To:</b>               | City Council           |
| <b>From:</b>             | Integrity Commissioner |
| <b>Wards:</b>            | All                    |
| <b>Reference Number:</b> |                        |

**SUMMARY**

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The purpose of this report is to enable the City to finalize its obligation under the *City of Toronto Act, 2006* to establish a Code of Conduct governing the behaviour of members of Council and local boards (restricted definition). It also responds to a number of resolutions that City Council adopted at its meeting of September 25, 26 and 27, 2006 in conjunction with its approval of a revised Code of Conduct.

Its principal conclusions are:

- There is no need for any further right of appeal from reports and recommendations of the Integrity Commissioner or actions of City Council on Code of Conduct complaints. Council reviews the reports of the Integrity Commissioner and any recommendation for sanction. Thereafter, the right to seek judicial review in the Divisional Court should suffice.
- The current limits to legal costs for members of Council defending themselves against violations of the Code of Conduct should be enhanced and extended to members of their staff and local boards (restricted definition).
- The Formal Complaint Procedure of the Complaint Protocol should contain enhanced procedural protections for those subject to a formal inquiry under the Protocol.

- The Complaint Protocol should contain provisions on the confidentiality of the Integrity Commissioner’s investigations and the form of reports on complaints to City Council.

The report also deals with other matters affecting the role of the Integrity Commissioner that City Council referred for consideration at its September meeting.

## **RECOMMENDATIONS**

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1. City Council authorize the amendment of the Code of Conduct Complaint Protocol to provide that claims for reimbursement by members of Council be processed under the “Indemnification Policy for Members of Council” subject to the following provisions applicable to Code of Conduct complaints:
  - a. An increase the limit for an automatic claim for legal and associated costs from \$5000 to \$20,000 in investigations where the Integrity Commissioner exercises the authority under the *City of Toronto Act, 2006* to proceed under the powers conferred by the *Public Inquiries Act*.
  - b. That costs be available and payable in advance in any investigation in which the Integrity Commissioner is of the opinion that the use of a lawyer by the parties would facilitate the process
  - c. That members of Council, their staff, and local boards (restricted definition) be eligible to apply for costs in any case where the Integrity Commissioner reaches the conclusion that there was a violation but that it was committed through inadvertence or an error in judgment made in good faith, and that the City Solicitor’s report under the policy will be in consultation with the Integrity Commissioner
  - d. That members of Council, their staff, and local boards (restricted definition) be eligible to claim for reimbursement of legal costs of a successful application for judicial review under the *Judicial Review Procedure Act* as well as those of intervention in a judicial review application arising from the actions of City Council or the Integrity Commissioner, or both, under the Code of Conduct where their interests are at stake.
2. City Council authorize the amendment of the Code of Conduct Complaint Protocol to include the follow procedures that reflect the *City of Toronto Act, 2006*:
  - a. The authority of the Integrity Commissioner to convene a public inquiry under the *Public Inquiries Act*.

- b. After the Integrity Commissioner has reached the tentative conclusion that there has been a violation of the Code of Conduct and to recommend that Council impose a sanction, the Integrity Commissioner should provide the person under investigation with a notice to that effect and an opportunity to comment in person or in writing on that tentative conclusion including the proposed sanction.
    - c. Except where the Integrity Commissioner determines that disclosure is necessary for the purposes of the proper conduct of an investigation, during the course of an investigation, the Integrity Commissioner shall not reveal the existence of or the details of any investigation of a complaint.
    - d. In any final report to City Council or a local board (restricted definition) on a complaint, the Integrity Commissioner may include such matters as are necessary to establish the grounds for any findings or conclusions in that report, including the identities of the complainant, the member who was the subject of the complaint, and those providing information
3. That Council authorize the City Manager in consultation with the Integrity Commissioner, City Solicitor, and Deputy City Manager and Chief Financial Officer to revise the Code of Conduct, Complaint Protocol and indemnity policies, as necessary, to incorporate the amendments set out in recommendations 1 and 2 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 Commission websites, and to file a copy with the City Clerk.

## **FINANCIAL IMPACT**

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In consultation with Deputy City Manager and Chief Financial Officer, it is understood that any funding as a result of the recommendations in this report, inclusive of legal expenses incurred by members of Council and their staff, will be absorbed within the City Council 2007 Operating Budget. Similarly, any costs incurred by member of boards will be absorbed within that Board's 2007 Operating Budget.

## **DECISION HISTORY**

A report on revisions to the Code of Conduct for Members of Council came before City Council at its meeting on September 25, 26 and 27, 2006, Council approved amendments to the Code of Conduct and its extension to Council members' staff. It also directed that the current Code of Conduct Complaint Protocol extend to complaints of violation of the Code of Conduct taken against members of local boards (restricted definition). However, it conditioned these approvals on further reporting on a number of issues:

1. The legal requirements for extending the Code of Conduct to Council members' staff and whether this would require legislative change;

2. The ramifications of revisions to the Code of Conduct for the Code of Conduct Complaint Protocol;
3. The need for an appeal mechanism and legal support program in light of the revisions to the Code of Conduct; and
4. Development of a proposal for a conflict of interest provision in the Code of Conduct (but not extending to apparent conflicts of interest).

In addition, Council requested the Integrity Commissioner to report to Council at its January meeting on whether to impose on members of Council personal finances disclosure requirements and also the issue of members of Council using their personal money to fund their office operations.

These matters (though directed to various personnel) were consolidated for the purposes of this report under the name of the Integrity Commissioner but carrying the approval of the relevant personnel.

## **ISSUE BACKGROUND**

The issues dealt with in this report emerge from various interrelated sources:

- the *City of Toronto Act, 2006* and its mandating of the adoption of a Code of Conduct for Members of Council and members of local boards (restricted definition)
- the recommendations of the Bellamy Commission and the work of the Bellamy Recommendations Steering Committee
- action suggested by the Integrity Commissioner in various reports
- motions adopted by Council at its September 2006 meeting as a consequence of concerns raised by members of Council.

## **COMMENTS**

### **Appeal Mechanism**

At present, there is no right of appeal from the reports and recommendations of the Integrity Commissioner and the actions of City Council on complaints against members of Council. However, Council reviews the reports of the Integrity Commissioner and any recommendation for sanction. Moreover, with the coming into effect of the *City of Toronto Act, 2006*, it is clear that members of Council and also members of local boards (restricted definition) will have access to judicial review in the Ontario Divisional Court when the actions of City Council and the Integrity Commissioner affect their situation adversely. This form of judicial review is ample. There is no other jurisdiction in Canada

that provides for more than this. (For further details on this and other matters, see Appendix I.)

### **Legal Support Program**

Section 9 of the Complaint Protocol currently allows complainants and responding members of Council to claim legal and related expenses up to \$5000 in certain circumstances. For expenditures above that, Council approval is required on a case specific basis. With the extension of the application of the Code of Conduct to the staff of members of Council and the procedures under the Complaint Protocol to both the staff of members of Council and the members of local boards (restricted definitions), Council should also extend the application of section 9 to both these groups.

Under the *City of Toronto Act, 2006*, the Integrity Commissioner has authority to deal with a complaint by convening an inquiry under the *Public Inquiries Act*. While it is not anticipated that this will occur all that often, the legal costs associated with participating in such a public inquiry may well be considerable. In such cases, the limit should be increased to \$20,000.

As well, it should be made clear that the right of a member of Council, her or his staff, and a member of a local board (restricted definition) to claim costs should extend to the legal costs of a successful application for judicial review in the Divisional Court against the actions or decisions of City Council and the Integrity Commissioner following a formal investigation under the Code of Conduct.

Since the Complaint Protocol was adopted, on November 24, 2005, City Council adopted an Indemnification Policy for Members of Council. It provides the circumstances under which members of Council can make a claim for legal costs not covered by the City's insurance policy. It is appropriate to provide that the Complaint Protocol provisions dealing with legal costs of investigations under the Code of Conduct (including any subsequent application for judicial review) are processed under the applicable indemnification policy.

At present, the Complaint Protocol does not allow a member of Council to recover costs in cases where the Integrity Commissioner concludes that there has been a violation of the Code of Conduct but that it occurred because of inadvertence or an error of judgment made in good faith. Council should allow for a member (as well as her or his staff and a member of a local board (restricted definition) to apply for legal costs in such cases subject to the approval of the City Solicitor, acting in consultation with the Integrity Commissioner.

### **Ramifications for the Complaint Protocol of the Revised Code of Conduct and the *City of Toronto Act, 2006***

- The Complaint Protocol should include a provision incorporating the authority of the Integrity Commissioner to operate as a public inquiry under Parts I and II of the *Public Inquiries Act*.

- The Complaint Protocol should reflect the seriousness of the sanctions now provided for in the *City of Toronto Act, 2006* and the Code of Conduct by enhancing the procedural rights of those under formal investigation. Before finalizing a report to Council calling for a sanction, the Integrity Commissioner should provide the subject of the report with notice to that effect and an opportunity to comment in person or in writing.
- The Complaint Protocol should include provisions respecting the requirement under the *City of Toronto Act, 2006* that the Integrity Commissioner conduct investigations confidentially but report to City Council publicly revealing such matters as are necessary for justifying the report's findings.

### **Conflict of Interest**

After considerable debate at its meeting of September 25, 26, and 27, 2006, Council accepted in principle that the Code of Conduct should include a specific provision on conflict of interest (but not extending to an apparent conflict of interest). It asked the Integrity Commissioner in consultation with the City Solicitor to report back on a possible provision.

The City Solicitor is still evaluating Integrity Commissioner's proposal for that provision.

### **Legal Ramifications of Extension of the Code of Conduct to the Staff of Members of Council**

While City Council approved in principle the extension of the Code of Conduct to the staff of members of Council, it postponed the implementation of that extension until such time as the City Manager (in consultation with the City Solicitor, the Executive Director for Human Resource and the Integrity Commissioner) reports of the steps required to implement that policy. That work is still in progress

### **Financial Disclosure**

One of the principal functions of the provincial Integrity Commissioner under the *Members Integrity Act* is the review of Members' annual financial disclosure statements. This role also exists in all of the other federal, provincial and territorial ethics or integrity regimes with the exception of Quebec. The issue whether this regime should also exist in the City of Toronto is a complex one. I am still consulting on it and will report back once those consultations have concluded and I have a recommendation to make.

### **Use of Personal Funds to Pay for Office Expenses**

Existing City Council policy forbids members of Council from using their personal funds to pay for or augment their office operations. The purpose of this policy is to achieve a level playing field among members of Council with respect to the resources put into their office operations. The original Code of Conduct does not incorporate this policy explicitly. Under the revised Code of Conduct, however, it will be a violation for a member of Council, one of their staff, or a member of a local board (restricted definition) to act in breach of a relevant City Council policy.

## **CONTACT**

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## **SIGNATURE**

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[David Mullan, Integrity Commissioner]

## **ATTACHMENTS**

Appendix I: Elaboration of Matters Discussed in Body of Report

## **Appendix 1**

### **Elaboration of Matters Contained in Body of Report**

#### **Appeal Mechanism**

Under the existing Code of Conduct and Complaint Protocol, the Integrity Commissioner is responsible for investigating complaints of violations of the Code of Conduct, determining whether the complaint is justified, and, when there has been a violation of the Code of Conduct, reporting to Council with any recommendations for sanction. Council then decides whether to adopt the report (including whether to impose, reject or vary any recommended sanction). There is no provision for an appeal from the findings of the Integrity Commissioner or the actions of Council. However, Council reviews the reports of the Integrity Commissioner and any recommendation for sanction, and may refer the matter back to the Integrity Commissioner for reconsideration.

A finding that a member of Council has violated the Code of Conduct is a serious matter and can have ramifications for the offender's reputation particularly when Council (or now a local board (restricted definition) in the case of one of its members) imposes a sanction. Where the sanction is a loss of salary (as now permitted by the *City of Toronto Act, 2006*) or a direction to repay money to the City (as now provided for in the revised Code of Conduct), the imposition of a sanction will also have financial consequences.

This concerned Council enough for it to call for a report on whether the Code of Conduct and Complaint Protocol should include an appeal mechanism as a form of protection for members of Council (and presumably others who may be subject to the regime – members of local boards (restricted definition) and the staff of members of Council).



At present, none of the federal, provincial and territorial integrity regimes provides for a right of appeal. With one exception, they follow the same general process as exists in the City of Toronto. There is an investigation, followed by a report to the legislature. The legislature then decides whether to adopt the report and impose a sanction. The only significant variation is that applicable to the Senate of Canada where complaints are filtered through a committee of Senators to the Senate Ethics Officer.

With the coming into effect of the *City of Toronto Act, 2006*, the office of Integrity Commissioner as well as the Code of Conduct and its complaint process (when formally adopted by Council) will have a statutory basis. This is important because it will open up the actions of the Integrity Commissioner and Council itself (in acting on the Integrity Commissioner's reports on complaints) to the possibility of an application for judicial review to the Ontario Divisional Court. On an application for judicial review, the Court can consider whether the Integrity Commissioner made any errors of law, exceeded jurisdiction, failed to provide a fair hearing, or reached a conclusion without any factual foundation or support. This is a limited form of appeal. It will offer protection from any substantial violation under the complaint process of the rights of members of Council, their staff, and members of local boards (restricted definition) as well as members of the public who are aggrieved by the way in which the Integrity Commissioner has handled their complaint.

Is this sufficient?

In the view of the Integrity Commissioner, it is. If the City of Toronto were to adopt a further appeal mechanism, it would be doing something that no other jurisdiction in Canada has done to this point under its ethics and integrity regimes. This is notwithstanding the fact that the possible sanctions in most other jurisdictions include expulsion and suspension as well as fines and other forms of monetary restitution. Provided the City adopts the recommendations in this report for enhanced access to paid legal services and greater procedural protections under the Complaint Protocol, access to judicial review should suffice to catch any instances of real injustice.

There would also be problems with the creation of an internal appeal mechanism. In particular, any appeal to a committee of members of Council or to Council itself would not only create logistical problems but also compromise the independence of the Integrity Commissioner by politicizing the process inappropriately. Also, to the extent that any appeal (and this is highly likely) hinged on legal issues, such an appeal body would almost certainly need legal counsel.

The other alternative is to create an external appeal process. However, it should be recognized that the creation of such a process could potentially jeopardize the monetary savings that came with the creation of the office of Integrity Commissioner and the internalizing of the complaint process. The City Solicitor has also advised that there is no authority in the *City of Toronto Act, 2006* for such an external appeal mechanism. That Act requires City Council or a local board (restricted definition) to make the final decision. All that City Council or a local board (restricted definition) could do legally is

seek advice from such an external panel on a case by case basis. Also, the seeking of that advice would have to be in conformity with the Act's confidentiality requirements. That means that the external panel would be restricted to the public report of the Integrity Commissioner.

### **Legal Support Program**

Section 9 of the Complaint Protocol currently allows complainants and responding members of Council to claim legal and related expenses up to \$5000. For expenditures above that, Council approval is required on a case specific basis.

In the case of complainants, access to these funds is available except when the Integrity Commissioner decides that the complaint was frivolous, vexatious or made in bad faith. In other words, the complaint does not have to be established for a claim to be made. On the other hand, for members of Council, costs are available only when there is a finding that there has been no violation of the Code of Conduct. This excludes from access to costs cases where the Integrity Commissioner finds that there has been a technical violation but decides that the circumstances do not warrant the imposition of a sanction.

In the nearly two and a half years that the office of Integrity Commissioner has existed, there have been no claims for costs under section 9. However, the Integrity Commissioner does have the impression that some members of Council who were under investigation did not seek legal advice and representation because of the expense and the risk that the cost would exceed \$5000 or not be recoverable should the Integrity Commissioner find the complaint to have been justified.

Should there be changes to this regime? Certainly, there are many instances where those subject to investigation under the Code of Conduct and the Complaint Protocol do not need a lawyer to represent them. This is particularly so where the facts are basically simple, there are no legal issues, and the likely consequences of a finding of violation not severe. Making it easier for lawyers to become part of the process will undoubtedly also have a tendency to formalize that process and to make it more complex procedurally. Some investigations will become more drawn out and expensive as a consequence. This is probably to no one's advantage save the lawyers.

Nonetheless, in the Integrity Commissioner's experience, there have been instances where the involvement of a lawyer has assisted greatly and others where it would have been very helpful had a lawyer represented the parties. Legal representation can ensure that the matters in issue are narrowed to what is relevant under the Code of Conduct and legal issues are addressed appropriately. It can also diminish the need for the Integrity Commissioner to in effect provide legal advice and guidance to the parties as a way of moving a complaint along.

Also relevant is that the *City of Toronto Act, 2006* and the revised Code of Conduct now envisage specific sanctions that can have a serious impact. Particularly if there is no right of appeal beyond access to judicial review (as recommended above), it may well be important in ensuring a sense of fair play that members of Council have legal

representation in cases where serious sanctions loom as a possibility. As well, the *City of Toronto Act, 2006* allows the Integrity Commissioner to elect to proceed as a commission under the *Public Inquiries Act*. In a city where today \$5000 does not buy too much legal advice and where legal representation is almost a necessity when someone is subject to the processes of a public inquiry, it seems obvious that \$5000 will seldom be adequate should the Integrity Commissioner adopt that mode of proceeding.

The Integrity Commissioner is also of the view that there are three other aspects of the current legal costs rule that merit attention.

Particularly in cases where there are no precedents and the Code of Conduct requires interpretation, members of Council, their staff, and members of local boards (restricted definition) should be able to seek legal costs when there has been a finding of violation of the Code of Conduct but the Integrity Commissioner is of the opinion that no sanction should be imposed because the violation was inadvertent or a good faith error judgment (as provided for in the Complaint Protocol). While there should not be an automatic entitlement to costs in such cases, Council should be able to authorize such payments acting on the advice of the City Solicitor and the Integrity Commissioner.

As well, the current rules make no provision for the availability of access to costs in advance, a situation that may effectively prevent a party from obtaining representation.

Finally, the current rule does not cover the costs of a subsequent application for judicial review (or indeed intervening on an application for judicial review) in the Divisional Court. Similarly, the Indemnification Policy for Members of Council and Management and Excluded Staff adopted by City Council on November 24, 2005 does not seem to cover the costs of judicial review proceedings brought in Divisional Court by members of Council, their staff, or members of local boards (restricted definition), or intervention in judicial review proceedings in which they have an interest. Both the current rule in the Complaint Protocol and the Indemnification Policy should be changed to make provision for coverage of those costs in cases where the application for judicial review is successful or the intervention justified. Indeed, more generally, the Indemnification Policy should be modified to incorporate appropriate provisions on the costs of Code of Conduct investigations and any subsequent proceedings.

As a consequence, there should be changes along the following lines:

That claims for reimbursement by members of Council be processed under the “Indemnification Policy for Members of Council” subject to the following provisions applicable to Code of Conduct complaints:

- i An increase the limit for an automatic claim for legal and associated costs from \$5000 to \$20,000 in investigations where the Integrity Commissioner exercises the authority under the *City of Toronto Act, 2006* to proceed under the powers conferred by the *Public Inquiries Act*.

- ii That costs be available and payable in advance in any investigation in which the Integrity Commissioner is of the opinion that the use of a lawyer by the parties would facilitate the process
- iii That members of Council, their staff, and local boards (restricted definition) be eligible to apply for costs in any case where the Integrity Commissioner reaches the conclusion that there was a violation but that it was committed through inadvertence or an error in judgment made in good faith, and that the City Solicitor's report under the policy will be in consultation with the Integrity Commissioner
- iv That members of Council, their staff, and member of local boards (restricted definition) be eligible to claim for reimbursement of legal costs of a successful application for judicial review under the *Judicial Review Procedure Act* as well as those of intervention in a judicial review application arising from the actions of City Council or the Integrity Commissioner, or both, under the Code of Conduct where the member's interests are at stake.

### **Ramifications for the Complaint Protocol of the Revised Code of Conduct and the *City of Toronto Act, 2006***

Under section 160(2) of the *City of Toronto Act, 2006*, the Integrity Commissioner has authority to invoke the powers found in Parts I and II of the *Public Inquiries Act* should that be necessary for the effective conduct of an investigation. This is a much more formal procedure than is currently provided for in the Complaint Protocol. It normally involves a formal public hearing and gives the officer conducting the inquiry powers of compulsion normally associated with a regular court. The Act also provides procedural protections for those under investigation including (section 5(2)) an entitlement to full notice of the nature of the allegations and the right to be heard during the inquiry in person or by counsel.

Section 160(5) of the *City of Toronto Act, 2006* confers on City Council the authority to impose sanctions for violation of the Code of Conduct: a reprimand and suspension of salary for up to ninety days. In addition, the revisions to the Code of Conduct provide for other sanctions such as loss of membership on or the position of Chair of a committee and directions for the repayment of money.

Under section 161(1) of the *City of Toronto Act, 2006*, the Integrity Commissioner is obliged to keep confidential matters coming to her or his knowledge in the course of an investigation. However, section 162(3) requires both City Council and local boards (restricted definition) to ensure that all reports from the Integrity Commissioner "are made available to the public". Section 162(2) further provides that in a report on an allegation of violation of the Code of Conduct, the Integrity Commissioner "may disclose such matters" as in her or his opinion "are necessary for the purposes of the report". This provision is a qualification on section 161(1) and section 161 in turn prevails over the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*.

These provisions affect the Complaint Protocol.

1. The Complaint Protocol should contain a provision that incorporates the authority of the Integrity Commissioner to convene a public inquiry under the *Public Inquiries Act*.
2. The ability of City Council to impose potentially serious sanctions for violation of the Code of Conduct gives rise to concerns whether the existing provisions of the Complaint Protocol protect sufficiently the rights of Councillors and members of local boards (restricted definition) under investigation by the Integrity Commissioner. In my view, once the Integrity Commissioner has reached the tentative conclusion that there has been a violation of the Code of Conduct and to recommend that Council impose a sanction, the Integrity Commissioner should provide the person under investigation with notice to that effect and an opportunity to comment in person or in writing on the tentative conclusion and the proposed sanction. That too should be incorporated in the Complaint Protocol.
3. These new powers also affect section 9 (“payment of costs) of the existing Complaint Protocol. I have dealt with that already.
4. The Complaint Protocol should also contain a provision incorporating and fleshing out the provisions of the Act with respect to secrecy of Integrity Commissioner investigations and the public availability of Integrity Commissioner reports to Council and local boards (restricted definition). That provision, based on the provisions governing investigations by the Federal Registrar of Lobbyists, should be drafted along the following lines:

Except where the Integrity Commissioner determines that disclosure is necessary for the purposes of the proper conduct of an investigation, during the course of an investigation, the Integrity Commissioner shall not reveal the existence of or the details of any investigation of a complaint.

In any final report to City Council or a local board (restricted definitions) on a complaint, the Integrity Commissioner may include such matters as are necessary to establish the grounds for any findings or conclusions in that report, including the identities of the complainant, the member who was the subject of the complaint, and those providing information.

### **Conflict of Interest**

After considerable debate at its meeting of September 25, 26, and 27, 2006, Council accepted in principle that the Code of Conduct should include a specific provision on conflict of interest (but not extending to an apparent conflict of interest). It asked the Integrity Commissioner in consultation with the City Solicitor to report back on a possible provision.

Such a provision would give effect to the recommendations of the Bellamy Commission, potentially provide for a wider range of conflicts of interest than are presently covered by the *Municipal Conflict of Interest Act* (pecuniary interests on the part of a member of Council and a narrow range of close personal relatives), and create an alternative mechanism to the one provided for in that Act for dealing with conflict of interest.

In a report to the Bellamy Recommendations Steering Committee, the Integrity Commissioner recommended such a provision, though one including apparent conflicts of interest. That recommendation (with the reference to apparent conflict of interest removed) reads as follows:

Members of Council are bound by the terms of the *Municipal Conflict of Interest Act*. 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 mechanism by way of application to a judge. It does not, however, exhaust the range of impermissible conflicts of interest.

Involvement in matters before Council in which one's family (beyond a parent, spouse, or child), friends, staff, 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 that are incompatible with a member's official duties. Other forms of preferential treatment or attempts to secure preferential treatment for family members, staff members, friends, or associates, business or otherwise can give rise to conflict of interest.

In matters coming before Council (or a committee of Council, or City agency, board or commission) in which a member has a conflict of interest in this extended sense, 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.

For the purposes of this provision:

“interest” does not include a matter:

- (a) that is of general application;
- (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
- (c) that concerns the remuneration or benefits of a member of Council, his or her family members, staff members, friends, or associates, business or otherwise; and

“family member” means

- (a) spouse, including common-law and same sex spouse;
- (b) parent, including step-parent and legal guardian;
- (c) child, including step-child;
- (d) sibling;
- (e) niece or nephew;
- (f) grandparent or grand-niece or –nephew; or
- (g) any person who lives with the member on a permanent basis.

At present, the City Solicitor is still considering this proposal, including whether it is legally compatible with the *Municipal Conflict of Interest Act*.

### **Legal Ramifications of Extension of the Code of Conduct to the Staff of Members of Council**

While City Council approved in principle the extension of the Code of Conduct to the staff of members of Council, it postponed the implementation of that extension until such time as the City Manager (in consultation with the City Solicitor, the Executive Director for Human Resource and the Integrity Commissioner) reports of the steps required to implement that policy. That work is still in progress

### **Financial Disclosure**

One of the principal functions of the provincial Integrity Commissioner under the *Members Integrity Act* is the review of Members' annual financial disclosure statements. This role also exists in all of the other federal, provincial and territorial ethics or integrity regimes with the exception of Quebec. At its meeting of March 1, 2 and 3, 2004, City Council authorized the City to seek enabling legislation from the province to enable it to enact by-laws creating “full Integrity Commissioner functions” similar to provincial models. This direction presumably included the creation of a financial disclosure and review regime. The *City of Toronto Act, 2006* makes no specific reference to such a regime or function and there have been no further initiatives to that end. The Report of the Toronto Computing Leasing Inquiry – Toronto External Contracts Inquiry (the “Bellamy Commission Report”) does not canvas this issue.

My consideration of whether to recommend that the City proceed with such a regime is still proceeding and further consultation and study is necessary before I report to Council on this.

### **Use of Personal Funds to Pay for Office Expenses**

At its meeting of October 1, 2 and 3, 2002, City Council adopted a policy requiring members of Council to pay for certain categories of office expense through their office budget, not personal funds: postage and distribution costs, printing services (newsletters, flyers, business cards), advertising and promotion and related office expenses, and photocopying. The only exception was the City's right to recover over-expenditures of a Member's office budget.

The reason for this policy was to create a level playing field among members of Council and not allow members of Council with greater wealth to supplement the operations of their office by use of personal funds. That policy remains in place and I see no reason to recommend its repeal or modification.

At present, violation of this policy is not a specific Code of Conduct offence. However, when the revised Code of Conduct comes into effect, it will contain a general provision to the effect that it is a violation of the Code of Conduct to subvert or not adhere to any applicable policy of Council. This would include paying for City office expenses out of personal funds. As a consequence, I see no need for further action on this matter.