



**AUDITOR GENERAL AND
INTEGRITY
COMMISSIONER REPORT
INFORMATION ONLY**

**Councillors Using Personal Funds for and Failing to
Report Office Expenses – Sanctions**

Date:	December 3, 2007
To:	City Council
From:	Jeff Griffiths, Auditor General, and David Mullan, Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

At its meeting of November 26, 2007, the Executive Committee requested the Auditor General and the Integrity Commissioner to submit a report directly to Council for its meeting scheduled to be held on December 11, 2007, *“on an appropriate protocol penalty if Members of Council do not comply with the Council policy with respect to the use of Councillors Office Expenses.”*

If a Member of Council does not comply with a Council policy, that is a violation of Article XV of the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* (“Code of Conduct”). Violations come within the authority of the Integrity. Acting on a complaint or a reference from City Council, the Integrity Commissioner will conduct an investigation and, if the allegation is well-founded, report to Council with or without a recommendation for sanction. Possible sanctions include a Council reprimand or loss of salary for up to ninety days. Council imposes the sanction and is not bound by the recommendation of the Integrity Commissioner.

If Council adopts the recommendations of the Executive Committee with respect to the reporting of office expenses and the use of personal funds for paying office expenses, based on the report of the Auditor General and the Integrity Commissioner (“Councillors Office Expenses – Councillor Ford and Councillor Holyday”), that will constitute due warning to the two Members of Council that they are leaving themselves open to a

complaint and formal investigation should they continue their current practices. The report of the Auditor General and the Integrity Commissioner does not, however, provide Council with a basis for imposing any sanction on the two Members of Council for past violations of the Office Expenses Policy.

Financial Impact

There are no financial impacts beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting of November 26, 2007, the Executive Committee requested the Auditor General and the Integrity Commissioner to submit a report directly to Council for its meeting scheduled to be held on December 11, 2007, *“on an appropriate protocol penalty if Members of Council do not comply with the Council policy with respect to the use of Councillors Office Expenses.”*

ISSUE BACKGROUND

This report arises out of another report that generated Executive Committee recommendations. Those recommendations will be before City Council at its meeting of December 11, 12 and 13, 2007. In that report, the Auditor General and the Integrity Commissioner determined that Councillors Ford and Holyday had violated the Council's policy on office expenses. In the case of Councillor Holyday, the violation was a failure to file details of personal expenses with the City Clerk. Those personal expenses were vehicle mileage and were not significant. Nonetheless, policy requires that such details be filed with the City Clerk irrespective of whether or not the Councillor is seeking reimbursement. In the case of Councillor Ford, he likewise has not filed with the City Clerk details of office expenses that he has paid personally. In addition, Councillor Ford, contrary to policy, has used personal monies to pay for certain categories of office expense. At its meeting of November 26, 2007, Executive Committee raised the issue of sanctions for this kind of failure to follow Council Policy and directed the Auditor General and the Integrity Commissioner to report directly to Council on this matter.

COMMENTS

Basis for Imposition of Sanctions

Article XV (“Failure to Adhere to Council Policies and Procedures”) of the Code of Conduct provides that failure to follow Council policies is a violation of the Code of Conduct.

Article XVIII (“Compliance with the Code of Conduct”) specifies a range of sanctions that Council may impose on Members of Council for violations of the Code of Conduct. The two most relevant of those sanctions are a reprimand or loss of remuneration for up to 90 days. Section 160(5) of the *City of Toronto Act, 2006* (“COTA”) provides direct authority for both. Also potentially available are some of the other sanctions specified in Article XVIII such as a request for an apology and removal from membership on or the Chair of a Council Committee.

Protocol for Dealing with Allegations of Violation of Code of Conduct and Imposition of Sanctions

Under Article XVIII, the ability of Council to impose a sanction on a Member depends on a report from the Integrity Commissioner that there has been a violation of the Code of Conduct. This too mirrors section 160(5) of COTA.

The Integrity Commissioner’s authority to investigate and report on violations of the Code of Conduct depends on a complaint from a member of the public, another member of Council, or City Staff, or a reference from Council itself: COTA, section 160, as reflected in Part B (“Formal Complaint Procedure”) of the *Council Code of Conduct Complaint Protocol* (“Complaint Protocol”).

Sections 6(3) and 7(4) of the Complaint Protocol both contemplate that the Integrity Commissioner may make a recommendation for sanction when he reports to Council that a Member has violated the Code of Conduct. Section 8 also provides that the Integrity Commissioner may refrain from making any recommendation for sanction and, in particular, where the Integrity Commissioner has determined that the violation “was trivial or committed through inadvertence or an error of judgment made in good faith”.

Council is not bound by the Integrity Commissioner’s finding that there has been a violation of the Code of Conduct or any recommendation as to sanction. The most common way of indicating this is for Council to simply receive the Report of the Integrity Commissioner. If Council agrees with the Integrity Commissioner’s finding that there has been a violation of the Code of Conduct but does not wish to impose a sanction (whether or not the Integrity Commissioner has recommended one), Council can adopt the Integrity Commissioner’s report minus any recommendation for sanction.

A Member of Council may apply for judicial review of Council’s decision to adopt the finding of the Integrity Commissioner and any imposition of a sanction.

The report by the Auditor General and the Integrity Commissioner that Councillors Ford and Holyday have each been in violation of the Council Policy on expense accounts does not provide a basis for the imposition of a sanction on either Member of Council. That report was a joint report of both independent officials of the Corporation and was not based on the formal investigation process specified in the Code of Conduct Complaint Protocol. However, if Council adopts that Report, it will have provided due warning to both Councillors as to their future course of conduct in such matters. If they continue to

refuse to follow the Policy, this would provide a basis for a formal complaint by reference to the process described above.

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SIGNATURES

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David Mullan, Integrity Commissioner