



**INTEGRITY
COMMISSIONER REPORT
ACTION REQUIRED**

Integrity Commissioner Annual Report - 2007

Date:	July 3, 2008
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

This is the third annual report of the Integrity Commissioner.

As required by the terms of my appointment, I report on my activities over the past twelve months. This involves a summary of various initiatives taken to improve the operations of the office and, more particularly, the rules and protocols under which it operates. It also accounts for the other elements of my mandate: the investigation of and reporting on complaints, provision of advice (including samples of advice given), educational initiatives, and responding to Council requests for reports on policy issues involving issues of integrity. As well, I outline the outreach activities of the office and account for its budget.

RECOMMENDATIONS

The Integrity Commissioner recommends that City Council receive this report for information.

FINANCIAL IMPACT

Receipt of this report will have no financial impact.

DECISION HISTORY

Item 8 on the list of the Integrity Commissioner's duties adopted by Council at its meeting of February 5, 6, 7 and 8, 2007 (Appendix II) requires her or him to report annually to Council. That report is to include in general terms examples of advice given and complaints dealt with during the previous twelve months. Section 162(1) of the *City*

of *Toronto Act, 2006* (“COTA”) directs the Integrity Commissioner in reporting to Council on advice provided not to disclose confidential information that could identify the person concerned.

COMMENTS

Overview

Part V (“Transparency and Accountability”) of *COTA* came into force on January 1, 2007. This gave the office of Integrity Commissioner a statutory basis. It also obliged the City to maintain the office of Integrity Commissioner and to have in place a *Code of Conduct* for members of Council and members of local boards (restricted definition) monitored by the Integrity Commissioner. Obviously, this was a significant moment in the evolution of my office.

In September 2006, in anticipation of the coming into force of the Act and to give effect to the recommendations of the Bellamy Recommendations Steering Committee, Council adopted a number of amendments to the *Code of Conduct for Members of Council* (“*Code of Conduct*”) and the *Members Code of Conduct Complaint Protocol* (“*Complaint Protocol*”). These amendments came into effect in early February 2007 when the new Council adopted recommendations for enhancement of the costs provisions in the *Complaint Protocol*.

The highlights of these changes to the *Code of Conduct* and *Complaint Protocol* included the extension of the Integrity Commissioner’s jurisdiction to complaints against most of the City’s agencies, boards and commissions (“local boards (restricted definition)” as defined in *COTA*). Substantively, the *Code of Conduct* now included an improper use of influence provision as well as making it a violation not to follow Council policy. The gifts and benefits Article was clarified and strengthened to include a reporting obligation of gifts above a certain value and an upper limit on the value of gifts and benefits from most sources. Obstruction of the Integrity Commissioner became an offence but Members following the advice of the Integrity Commissioner gained immunity from a subsequent *Code of Conduct* complaint. In addition, the *Code of Conduct* incorporated the penalties provided for in *COTA* (a reprimand and loss of salary for up to 90 days) as well as a range of other sanctions such as a request for an apology, loss of membership on a committee, and repayment of the value of the improper use of City facilities. (Fuller details are contained in my 2006 Annual Report.)

Working on the development and implementation of these and subsequent changes to the *Code of Conduct* and the *Complaint Protocol* occupied a significant amount of my time during 2007. I also continued to conduct investigations of complaints made generally by members of the public against Members of Council. (Despite the new jurisdiction, there were no complaints against members of local boards (restricted definition) during 2007, although I did report to Council on a member of a local board for obstructing me in the performance of my duties.)

During 2007, I made three reports to Council in which I found that a Member had violated the *Code of Conduct*. In two of those instances, I found that the violation was the

result of an error in judgment made in good faith and recommended that Council not impose any sanction. In the third, I recommended that Council reprimand the Member should the Member not apologize to the complainant. Council chose to receive that report and not adopt my recommendation. I comment in greater detail on this later in my report.

I was also involved in finalizing investigations of complaints of inappropriate actions by incumbents during the 2006 Municipal Election campaign. In none of these instances did I find a violation but the issues that they raised led me to file a report to Council about election-related issues in tandem with the election reports to Council from the City Clerk and the Director of Elections and Registry Services. Later in the year, the Auditor General and I responded to a request from Council to investigate allegations that two Members were using their personal funds for office expenses and not reporting those uses to Council. We found that allegation sustained in one of the two cases and reported more generally on the issue of use of personal funds for office purposes.

2007 saw a significant growth in the number of requests for advice from Members of Council. As I have mentioned in previous reports, I regard this aspect of the Integrity Commissioner's work as the best indicator of the success of the office. I was therefore reassured by the use that was made of this facility by Members during 2007 particularly after a downturn in 2006.

Early in 2007, I met with all but one of the new Members of Council as part of my responsibilities for making Members aware of their responsibilities under the *Code of Conduct*. Subsequently, in conjunction with the Director of Council and Support Services, there was a well-attended briefing for the staff of Members of Council. I also maintained contact with new and continuing Members through my advice role and later in the year by way of extensive consultation on the issue of donations to and sponsorships of community events organized by Members. Council referred this issue to me in the context of its consideration of my 2006 Annual Report.

Within the City, I continued to have an excellent relationship with Jeffrey Griffiths, the Auditor General, and subsequently with Marilyn Abraham, following her appointment as the first Lobbyist Registrar. I also continued to have fruitful and harmonious interactions on a range of policy and administrative matters with the City Manager, the City Clerk and the City Solicitor, and a number of their staff. My Administrative Assistant, Zorida Ali left in early 2007 to take a full-time position elsewhere in the City and she was replaced in April 2007 by my current Administrative Assistant, Carol Birkett. Both have been indispensable in the efficient operation of my office.

Externally, I continued to be a Member of the Canadian Conflict of Interest Network (and to benefit from the Network's research and information facilities) as well maintained a relationship with the Centre for Ethics at the University of Toronto and the Centre for Practical Ethics at York University. I also undertook a number of speaking engagements on the work of my office.

My position remained a part-time one and, with the exception of a period of five or six months stretching from the latter part of 2006 through the first few months of 2007, that

has proved a realistic assessment of the demands of the office. However, for that five or six month period, the workload did reach full-time dimensions. The causes were, however, temporary – the increase in my advice and investigation workload during and in the aftermath of the 2006 Municipal Election, involvement in the development and implementation of the policy changes resulting from the coming into force of *COTA* and the work of the Bellamy Recommendations Steering Committee. The situation was also exacerbated by the three month gap between the departure of one Administrative Assistant and the hiring of a new one. Thereafter, the work pattern of my office settled back into its regular routine.

Most importantly, in my relationships with City officials and Members of Council (including the Mayor), there continued to be respect for the independence of my office. This was so despite the fact that, from time to time during the year, there was resentment on the part of some Members that they were the subject of an investigation. However, in terms of the investigations that I completed in 2007, this resentment never translated itself into anything other than full cooperation with my inquiries.

During 2007, my second contract with the City came to an end. However, I agreed to accept a further one year contract while putting the Mayor and the City Manager on notice that I would not be seeking a further extension beyond August 31, 2008.

Policy Development and Other References from Council

Revisions to *Code of Conduct* and *Complaint Protocol*

At its meeting of September 28 and 29, 2006, Council approved in principle a number of changes to the *Code of Conduct* and *Complaint Protocol*. These were detailed in my 2006 Annual Report. However, it made the coming into effect of those changes contingent on enhancements to Members' entitlement to legal costs in the *Complaint Protocol*. Further changes to the *Complaint Protocol* were also necessitated by the coming into effect of *COTA*.

At its meeting of February 5, 6, 7 and 8, 2007, Council approved those changes to the *Complaint Protocol*. As a consequence, the revised *Code of Conduct* and *Complaint Protocol* came into effect on the last day of that Council meeting, with the revised legal support regime to apply retroactively to the first day of the term of the new Council.

The principal changes to the costs provisions in the *Complaint Protocol* were:

1. An increase in the entitlement to legal costs from \$5,000 to \$20,000 in situations where the Integrity Commissioner conducts an investigation exercising powers conferred in the *Public Inquiries Act* (as authorized by *COTA*) or in situations when “a Member of Council finds it necessary to apply for judicial review”, the latter addition resulting from an amendment moved in Council.
2. Availability of costs prior to the conclusion of an investigation in situations where the Integrity Commissioner believes the involvement of a lawyer would be useful.

3. An entitlement to costs on the part of Members of Council and local boards (restricted definition) in investigations where the Integrity Commissioner concludes that there was a violation but that it was committed through inadvertence or an error of judgment made in good faith.
4. An automatic entitlement to legal costs up to \$20,000 in situations where a Member of Council or a local board (restricted definition) is successful in an application for judicial review of the actions of Council or the Integrity Commissioner under the *Code of Conduct*, as well as the right to request reimbursement of any costs above \$20,000.

In addition, Council approved amendments to the *Complaint Protocol* to reflect the provisions of *COTA* concerning the Integrity Commissioner's reports to Council on investigations and also authorizing the Integrity Commissioner to conduct an investigation by way of public inquiry under the *Public Inquiries Act*. Council also adopted my recommendation that the Integrity Commissioner provide a Member of Council or a local board (restricted definition) with notice of any tentative conclusion that he or she has violated the *Code of Conduct* and an opportunity to contest or otherwise comment on that tentative ruling.

In practical terms, the major impact of these changes and the provisions of *COTA* came in the way in which I reported to Council on violations of the *Code of Conduct*. Previously, I commonly filed two reports on investigations in which I had concluded that there had been a violation of the *Code of Conduct*: a public report and a confidential one in which I provided Council with the full details. I proceeded in this way mainly because of concerns arising out of the privacy provisions in the *Municipal Freedom of Information and Protection of Privacy Act* ("MFIPPA"). As a result of *COTA*, my investigations were no longer subject to *MFIPPA* and I became obliged to report publicly to Council disclosing in the report

...such matters as in the Commissioner's opinion are necessary for the purposes of the report.

This clarification of the situation and the ability to ensure greater public transparency and accountability in my reports to Council on investigations were most welcome. At the same time, the changes imposed on the Integrity Commissioner the onus of determining what information was a "necessary" component of any public report to Council. That is not always an easy balancing exercise. However, it has been facilitated by the new provision in the *Complaint Protocol* providing Members with the opportunity to comment on a draft of my proposed report. In that way, I have been forced to consider the extent to which my reports should name and provide information about third parties involved in the actions giving rise to the initial complaint and subsequent investigation. That has been a valuable discipline.

Subsequently, on my recommendation, Council at its meeting of July 16, 17, 18 and 19, 2007, approved further amendments to the *Complaint Protocol*. The first of these permits the Integrity Commissioner to participate in informal attempts to resolve complaints

under Part I of the *Complaint Protocol*. The second motion adopted by Council made it clear that where costs are provided in advance of a final report on an investigation, they are not subject to repayment irrespective of the outcome of the investigation, that any denial of costs resulting from the Integrity Commissioner's findings does not apply if the Integrity Commissioner's finding is overturned on judicial review, and that the tariff of costs in the Indemnification Policy for Members of Council also applies to the legal costs of a local board member or complainant.

Finally, at its meeting of October 22 and 23, 2007, City Council adopted another amendment to the costs provisions in the *Complaint Protocol*. This extended a Member's entitlement to claim legal costs to situations where the Integrity Commissioner has reported a violation of the *Code of Conduct* to Council and Council takes no action on the report other than receiving it. This was a Council initiative and not prompted by me except in the indirect sense that Council had voted to receive one of my reports in which I reported a violation of the *Code of Conduct* and made a conditional recommendation for a sanction.

Committee of Adjustment Proceedings

In my 2006 Annual Report, I reported on my involvement with the Auditor General in an investigation of the way in which certain applications had been dealt with by the North York Committee of Adjustment. City Council adopted the Auditor General's final report in this matter at its meeting of February 5, 6, 7 and 8, 2007. That report was filed in consultation with both the City Solicitor and me. It brought about significant procedural and other changes to the way in which all Committees of Adjustment across the City operate. As far as the Integrity Commissioner's mandate is concerned, the most important of the Report's recommendations were those clarifying the respective roles of Members of Council, members of Committees of Adjustment, and staff so as to preserve the adjudicative independence of the Committees of Adjustment.

Municipal Election Issues

In the aftermath of the 2006 Municipal Election, the City Clerk and the Director of Elections and Registry Services consulted me about my experiences in dealing with complaints about incumbents during the course of the election campaign. The upshot of this was that I filed a report with the Executive Committee endorsing the City Clerk's recommendations for a thorough revision of the enforcement mechanisms of the *Municipal Elections Act*. City Council received this report for information at its meeting of November 19 and 20, 2007.

In that report, I also urged Council to impose a much earlier cut-off date in an election year for the distribution of office expense account-funded newsletters as well as a ban on Business Improvement Areas endorsing candidates in municipal elections. While these did not take the form of formal recommendations, I remain optimistic that Council will take action on both these matters. My report also noted that I still had under consideration a reference from Council as to whether there should be a moratorium on filing complaints against Members standing for re-election for six months prior to the election.

Donations to and Sponsorships of Community Events Organized by Members

At its meeting of September 26 and 27, 2007, in the context of my Annual Report for 2006, Council requested that I review the prohibition on Members receiving donations and sponsorships for community events that they organize in their Wards. This came in response to advice to Members from the Director of Council and Support Services and me that donations and sponsorships of this kind were not included in the list of permissible gifts and benefits in Article IV (“Gifts and Benefits”) of the *Code of Conduct*.

Subsequently, I filed an interim report on this issue at the November 26, 2007 meeting of the Executive Committee recommending that Council endorse in principle the addition of these forms of donations and sponsorships to the list of permissible gifts and benefits in Article IV and put in place an interim policy governing receipt of donations and sponsorships. At its meeting of December 11, 12 and 13, 2007, Council provided the endorsement in principle and passed a motion allowing Members to receive donations and sponsorships of up to \$5,000 per event (subject to the Gifts and Benefits reporting rules) until such time as the Integrity Commissioner brought forward recommendations for a policy on support for Member-organized events.

Involvement in Other Policy Initiatives

As part of the implementation of the recommendations of the Bellamy Commission Report and other changes to the *Code of Conduct* and *Complaint Protocol*, Council referred a number of other matters to the Integrity Commissioner for review and report through the Executive Committee: the feasibility of a personal finances disclosure regime for Members of Council, whether Members subject to a *Code of Conduct* complaint should be entitled to the costs of an initial legal consultation, and, already mentioned, the appropriateness of a moratorium on the filing of complaints and the conduct of investigations for six months prior to an election. These were matters that I still had under consideration at the end of 2007.

Also, still left over from the September 2006 meeting of Council were the legal feasibility of giving effect to Council’s approval in principle of the inclusion of a conflict of interest provision in the *Code of Conduct*, the appropriateness of the application of the *Code of Conduct* to Members’ staff, as well as a consideration of the issue of Members’ using their own money to pay for their office operations. The first two of these also remained under consideration at the end of 2007. However, the third became subsumed within Council’s request to the Auditor General and the Integrity Commissioner that they investigate two Members for the alleged use of personal funds for office purposes (reported on below). In the context of the report to Council on that investigation, the Auditor General and I suggested that Members should be able to use their own money to pay for their office expenses provided they reported these amounts to Council and Support Services and that their overall expenditures did not exceed the amount Council will pay for office expenses in any one year, currently \$53,100. That proposal then became part of the Council-directed City Clerk evaluation of the Members’ Expense Account policy.

During the course of the year, I also worked with Human Resources on the issue of discrimination and harassment complaints against Members of Council and with the City Manager’s Office on the development of a separate Code of Conduct for members of local boards (restricted definition).

Complaint Investigation and Reporting

Statistics – January 1, 2007 to December 31, 2007

Formal Complaints Received:	11 ¹
Informal Complaints Received:	2 ²
Settled, Withdrawn or Abandoned:	1 ³
Rejected as Beyond Jurisdiction:	1.5
Rejected as Frivolous or Vexatious, Made in Bad Faith or Without Substance:	2.5
Rejected after Formal Investigation:	1
Sustained:	2 ⁴
Still under Investigation (as of December 31, 2007):	4 ⁵
Complaints by Staff:	0
Complaints by Public:	8
Complaints by Members:	1
References by Council	2
Members Complained Against:	7
Under Investigation as of December 31, 2006:	9 ⁶

¹ Two of the eleven came in the form of a reference from Council.

² One from a member of the public and one from a Member of Council.

³ The two informal complaints were settled to the satisfaction of the complainant and the Member.

⁴ In addition, in 2007, Council considered reports on two other complaints filed in 2006. In one the report was filed in 2006 but not considered until the first Council meeting of 2007.

⁵ As of this date, two remain under investigation, one is on hold pending receipt of further information, and the fourth was abandoned.

Commentary

When compared to 2006, the number of complaints was significantly lower: eleven as compared to 26. However, as in 2006, the main source of complaints continued to be members of the public. There was only one complaint from a Member against another Member, one reference from Council involving two Members, and no complaints from members of staff. Despite my expanded jurisdiction, there were no complaints against members of local boards (restricted definition).

Of the complaints received during 2007, four involved allegations with respect to conduct during the 2006 Municipal Election campaign. The issues were improper use of staff and office resources as well as attempts to influence City officials. In none of these cases did I proceed to conduct a formal investigation. Either there was insufficient supporting evidence or there were jurisdictional or procedural reasons for not starting an investigation.

The other seven complaints covered a range of allegations: improper use of City resources, an unjustifiable expense account claim, improper influence of City officials, two instances of discreditable conduct, and two instances of failing to adhere to the Office Expense Budget policy, the latter coming as a reference from Council. Of these, two were sustained, though four remained under investigation at the end of the calendar year. The other was dismissed.

The two complaints that were found justified involved the same Member of Council. In one, the Member had improperly used envelopes bearing the City of Toronto logo for personal purposes. I reported this to Council as an inadvertent violation committed in good faith and not deserving of sanction. The second infraction involved a failure to report use of personal funds for office operations and improper use of personal funds for office operations. This finding was contained in a joint report from the Auditor General and Integrity Commissioner, and City Council adopted a subsequent report recommending that it not impose any sanction on the Member. However, Council did refer the whole issue of Members' Office Budgets to the City Clerk for a report. In neither of these instances was I of the view that Council should exercise the formal sanctioning power conferred on it by *COTA* and confirmed in the *Code of Conduct*.

In 2007, I also reported to Council findings of violations arising out of two complaints filed in 2006. One of these complaints involved an improper use of a Member's office website for provincial election purposes. This too, I reported as an error of judgment made in good faith and did not recommend any sanction. Indeed, at the time of reporting, the respondent was no longer a Member not having run in the 2006 Municipal Election.

The other report on a 2006 complaint involved a rather different and, in my view, more serious issue. As a consequence, I recommended that Council request the Member to

⁶ One of these complaints was still under investigation as of December 31, 2007. I reported on the disposition of the other eight in my 2006 Annual Report.

apologize for what I assessed to be discreditable conduct in relation to another Member or face a reprimand. Council received this report without debate and, thereby, in effect rejected my report including the recommendation. This is, of course, Council's prerogative.

From my perspective, however, it was disconcerting that this action was taken without debate. I was left to speculate on what Council's actions indicated: a rejection of my finding that the Member had violated the *Code of Conduct*, or just the recommendation for sanction, or something completely different. Indeed, it may well be that the actions arose out of a whole range of concerns to which I was not privy.

Not surprisingly, the actions of Council also led me to worry about whether I had lost the confidence of Council and should consider resigning. However, as I indicated to the media at the time, my conclusion was that I should respect Council's choice with an awareness that if this treatment of my reports was repeated, I should indeed seriously re-evaluate my position as Integrity Commissioner. Nonetheless, and this is something that I will address more fully in my final report to Council, it remains my view that the decision on whether to impose any sanction on a Member for violation of the *Code of Conduct* should remain with Council and not be vested in the Integrity Commissioner. Council has to take ultimate responsibility for upholding the *Code of Conduct*; final authority should not rest with the Integrity Commissioner.

Part I of the *Complaint Protocol* makes provision for the informal settlement of complaints and, as mentioned earlier, during 2007, Council amended the *Complaint Protocol* to allow the Integrity Commissioner to be involved in the informal settlement of complaints. As a consequence, on a few occasions, I suggested use of the informal complaint procedure and also offered to facilitate that process. Two potential complainants took up that offer, one a member of the public and the other a Councillor. In each instance, the Member who was the subject of the informal complaint admitted the violation and expressed a willingness to rectify the situation. As a consequence, the complainant did not file a formal complaint.

Obviously, where there is a serious violation involving the broader interests of the City and its citizens, my office should not be in the business of encouraging informal resolution of complaints. The principles of accountability and transparency require a formal investigation and, if there has been a violation, a report to Council. However, for situations where the broader public interest is not engaged and particularly where the matters in issue involve disputes between or among Members or between Members and constituents, the informal dispute mechanism is very useful. Also, there will always be situations where potential complainants do not want to file a formal complaint but are content to have the matter raised and resolved informally. In those instances, given that the Integrity Commissioner cannot commence a formal investigation without a formal complaint, the informal complaint mechanism provides the only way of doing anything about the alleged violation.

Advice Given

Statistics – January 1, 2007 to December 31, 2007

Members of Council

Advice Sought:	55
Members Seeking Advice:	34
Informal Advice:	45
Formal Written Advice:	10

Citizen and Staff Inquiries

Citizen:	161
Staff:	19

Commentary

The number of requests for advice from Members more than doubled between 2006 and 2007 (55 as opposed to 23) and involved a high percentage of Members (34 as opposed to 17). In last year's Report, I worried about the decrease in numbers of requests for advice from the previous year but speculated that, with the 2006 Municipal Elections out of the way and the *Code of Conduct* about to provide a defence to complaints for Members acting on advice, the numbers would rise in 2007. Those considerations coupled with the arrival of eight new Members did in fact lead to an increase in numbers. This was reassuring particularly as I have always made it clear that, in my view, the most important indicator of the effective functioning of the office of Integrity Commissioner and the degree to which Members were conscious of their obligations under the *Code of Conduct* was to be found in the extent to which Members appreciated possible ethical problems in impending conduct and took steps to resolve those dilemmas before acting.

The statistics on inquiries from staff and members of the public also showed a marked increase from 2007: 180 overall as compared to 100. However, as reported in previous years, a great number of the calls to my office (especially from members of the public) are about matters over which I have no jurisdiction. Most commonly, the matters of concern are typically the purview of an Ombuds-type official. My Administrative Assistant and I try at least to ensure that these concerns are directed to the appropriate officials. However, we are anticipating that the workload associated with this will diminish drastically with the advent of both the Ombudsperson and the 3-1-1 system.

Many of the other calls to my office from members of the public involved issues of service from Members of Council and their staff. Despite the fact that, on my recommendation, Council revised the Discreditable Conduct provision (now Article XVIII) in the *Code of Conduct* to no longer impose a general obligation to treat constituents “fairly”, members of the public commonly see the Integrity Commissioner’s office as a place where they can grieve if they perceive that Members of Council have failed to deliver expected levels of service or favoured another interest over their own. As a consequence, my Administrative Assistant and I have developed a standard response – to explain as best we can that these are generally not *Code of Conduct* matters and, with the consent of the person contacting our office, to send the communication on to the Member in question for information only.

Conversely, some Members of Council have now adopted the practice of sending on to the Integrity Commissioner’s office details of harassment (often vituperative) on the part of members of the public.

Samples of Advice Provided

- Q.** May a Member of Council use her or his City Hall Office, city-funded constituency office, or Council website to convey expressions of support for a candidate for an upcoming federal or provincial election?
- R.** No, this constitutes the use of the City’s property and facilities for other than the purposes of the Corporation: see Articles VI and VII of the *Code of Conduct*.
- Q.** May a Member of Council become an office holder in a community organization?
- R.** There is no impediment to Members being involved in community organizations whether Ward-based or City, national or provincial in their scope and objectives. However, Members should exercise caution in accepting such positions if lobbying or seeking other forms of benefit or preference from the City is a principal part of the organization’s activities. Such activities can also give rise to specific obligations under the *Municipal Conflict of Interest Act*.
- Q.** A person who contributed to my re-election campaign has a matter before the Community Council on which I serve. Do I have to declare a conflict and refrain from participation.
- R.** At present, the receipt of campaign contributions does not in itself give rise to a conflict of interest for Members when the donor subsequently has a matter before Council or one of its committees.
- Q.** May a Member of Council act as a reference for someone seeking a position with the City on the basis of work with that person on a community organization?
- R.** Yes, this is a “relevant relationship” in terms of the Council policy on members providing references for those seeking a position with the City.

- Q.** At an event a Member is attending as part of her or his official duties as a Member of Council, the Member (along with all others attending the event) is presented with a gift. May the Member accept the gift?
- R.** Yes, as a matter of protocol, unless the donor is a lobbyist and provided the value of the event and the gift does not in total exceed \$500 and it does not lead to a situation where the Member in aggregate has received gifts and benefits from that source during the current calendar year worth more than \$500. Also, if the combined value of the event and the gift exceeds \$300, the Member must file a gifts and benefits report with the Integrity Commissioner: see Article IV of the *Code of Conduct*.
- Q.** An organization seeking to renew a contract with the City sends a gift to all members of Council. May Members accept the gift?
- R.** No, whether the gift comes from a lobbyist or directly from the organization, it is not within the scope of permissible gifts and benefits: see Article IV of the *Code of Conduct*.
- Q.** May a Member accept the personal use of a private vehicle for the duration of a community event being held in her or his Ward?
- R.** Irrespective of whether the vehicle is displaying promotional material relating to the donor, this is not a permissible gift of benefit: see Article IV of the *Code of Conduct*.
- Q.** A member attends an event in her or his Ward celebrating the completion of a significant property development. The property developer asks the member to pose for a photograph along with other dignitaries attending the event. Should the member agree?
- R.** Inquire as to the use that the developer intends to make of the photograph. If the answer is that it will be used for advertising or other promotional purposes, decline the invitation: see Article VIII of the *Code of Conduct*.

Gifts and Benefits Reporting

As a result of amendments to what is now Article IV (“Gifts and Benefits”) of the *Code of Conduct*, Members became obliged to file a report of any permissible gift or benefit or accumulation of gifts and benefits from a single source during a calendar year worth more than \$300. In the course of just under eleven months during which this regime was in place in 2007, I received only two reports under this provision. I suspect very strongly that, despite considerable publicity of this obligation among members and their staff, it is either being ignored or forgotten. This is regrettable.

Education

On June 13, 2007, the Director of Council and Support Services and my office followed up on the December 2006 educational programme for Members of Council with a short programme for the staff of Members of Council. Thirty-five staff from twenty-five offices (as well as two or three Members) attended that session. The questions were good and the discussion useful.

I also followed up on this and the various amendments to the *Code of Conduct* and *Complaint Protocol* in August by distributing to all Members a document containing the updated *Code of Conduct* and *Complaint Protocol*, as well as information on the Gifts and Benefits reporting process.

In addition to these efforts, staff from the City Manager's Office participated in sessions for members of local boards (restricted definition) at which they provided information about the application to their functions of the *Code of Conduct* and the jurisdiction of the Integrity Commissioner.

As well as educational outreach for Members of Council and their staff, I also met with and spoke to a number of City public service groups about my role and, in particular, the obligations of Members of Council when dealing with staff. A list of those meetings can be found in the following section of this report.

Other Aspects of My Work

As a result of amendments to the *Municipal Act*, as of January 1, 2007, other municipalities in Ontario were authorized, though not obliged to appoint an Integrity Commissioner, and also a Lobbyist Registrar, an independent Auditor General, and an Ombudsman. During the year, that produced a number of inquiries to my office for information about my functions and the way in which in a practical sense, the office operated. By the end of the year, Integrity Commissioners had been appointed in Woodstock and Meaford and were under active consideration in a few other Ontario municipalities.

During 2007, I also continued to participate in the Canadian Conflict of Interest Network and maintained my links with the Centre for Ethics at the University of Toronto as well as the Centre for Practical Ethics at York University. The association with the University of Toronto also involved supervision of two students taking a fourth year honours course at the Centre for Ethics, one in the winter and one in the fall Term.

I have also remained open to invitations to speak to various groups about the role of the Integrity Commissioner and my experiences in that role. During 2007, I spoke to the following groups:

- City Clerk’s Office Ethics Decision-Making Workshop
- Municipal Licensing and Standards Leadership Team
- The Integrated Inspection, Enforcement and Prosecution Working Group
- Delegation from Chinese Ministry of Supervision
- Staff of Members of Council
- Delegation from Shijiazhuang Municipal Government, Hebei Province, China
- Osgoode Hall Law School Professional Development, Part-time LL.M. in Municipal Law, Ethics and Municipalities Course
- Osgoode Hall Law School Professional Development, Continuing Legal Education Conference, “Reducing the Risks of Municipal Liability”
- Faculty of Law, Queen’s University
- Faculty of Law, University of Western Ontario
- York University Centre for Practical Ethics programme on Judicial Ethics
- University of Toronto Centre for Ethics.
- Ontario Bar Association, Public Sector Lawyers

Budget

The accounts for my office for 2007 are set out in the Appendix to this Report.

As in the previous fiscal year, Council allocated \$200,000 for the operation of my office. Expenditures totalled \$145,990, a decrease of almost \$3,000 from the previous year. This left a surplus of \$54,010. The major items were salary and benefits for my Administrative Assistant and me and amounted to \$143,611. Non-salary related items totalled \$2,379.

I would simply reiterate the comment that I made in each of my previous annual reports. Council should not regard the existence of a surplus as an indication that the original budget request was exaggerated. Once again, my office did not have to bear the cost of a major investigation and, as in 2006, I did not have to seek external legal advice during 2007. Should I engage in a major investigation and, in particular, have to exercise the powers of a public inquiry (now conferred by *COTA*), the operations of the office could very rapidly move to a deficit position.

Conclusions

2007 put the office of Integrity Commissioner on a permanent statutory footing. This was important for the status of the office as an important component of the City's expanding accountability and transparency regime. That regime was also boosted in complement during 2007 when the City appointed the first Lobbyist Registrar and the Lobbying By-law, including the Lobbyist Code of Conduct, came into effect. Also anticipated were the appointments of both an Ombudsperson and an Open Meetings Commissioner.

The coming into force of *COTA* and the work of the Bellamy Recommendations Steering Committee also provided opportunities for revising both the *Code of Conduct* and the *Complaint Protocol*. Indeed, there were a number of aspects of this process that were still outstanding at year's end including the development of a separate *Code of Conduct* for members of local boards (restricted definition) and a policy for donations to and sponsorships of community events organized by Members of Council.

These events aside, however, the work of the Integrity Commissioner's Office did not change all that much in 2007. There were fewer formal complaints but that was offset by an increase in the number of requests for advice from Members of Council and their staff. (This was a desirable development.) However, the work of the office did not increase as might have been anticipated as a consequence of accretions to the Integrity Commissioner's authority. There were no complaints, either formal or informal, against members of local boards (restricted definition). The gifts and benefits reporting obligations produced only two filings. In none of the investigations that I conducted in 2007 (with possibly one exception) did I even consider constituting myself as a public inquiry under the *Public Inquiries Act*. On the only occasion on which I determined that Council should consider imposing one of the sanctions now specifically authorized by *COTA*, Council balked.

In fact, in a very real sense, 2007 was a transitional year in which Members of Council and my office were coming to terms with the new realities. Indeed, not surprisingly, some Members expressed a real sense of anxiety about the extent to which the evolving transparency and accountability apparatus had increased their exposure to public and official scrutiny. In contrast, others welcomed the new regime as one that provided them with the opportunity to seek guidance and advice, and lessen the extent to which they had to worry about possible public and official scrutiny of their conduct. In the absence of any significant indications of egregious misconduct on the part of Members of Council, the latter perspective is in my view the more appropriate one.

That does not mean that the rules and policies under which my office operates are ideal. There are a number of aspects to the existing regime which are seriously flawed, such as the current provincial statutory regimes with respect to conflict of interest and municipal elections complaints. I will be addressing these issues and others in my final report scheduled to be filed with Council also for consideration at its July meeting.

In the meantime, however, I want to reiterate the sentiments expressed in my two previous annual reports. I have been very grateful for the opportunity to serve the City of Toronto as its first Integrity Commissioner and to have had a role in setting up and refining the Office and its operations. It has provided me with the opportunity to work closely with dedicated Members of Council, fine, creative and resilient members of the public service of Toronto (including my two Administrative Assistants), the other transparency and accountability officers, as well as many external to the City with an interest in ethics and the welfare of the City.

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SIGNATURE

David J. Mullan, Integrity Commissioner

ATTACHMENT

Appendix I: 2007 Budget and Expenditures

Appendix II: Duties of Integrity Commissioner