



**INTEGRITY  
COMMISSIONER REPORT  
ACTION REQUIRED**

**Integrity Commissioner End of Term Report - 2008**

<b>Date:</b>	July 8, 2008
<b>To:</b>	City Council
<b>From:</b>	Integrity Commissioner
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

---

My term as Integrity Commissioner ends on August 31, 2008. This Report contains details of my work during the first six months of 2008 as well as highlighting some of the more significant developments during my four years in office. It also discusses outstanding issues surrounding the Integrity Commissioner's mandate.

**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**

Section 162(1) of the *City of Toronto Act, 2006* ("COTA") provides that the Integrity Commissioner may make "periodic reports to Council."

**COMMENTS**

**General**

My time as Integrity Commissioner ends on August 31. It is therefore appropriate that I report to the last meeting of Council before then on my work during the first half of 2008 and, more generally, on the work of the office over the past four years.

For the past six months, the work of the office has by and large followed the same pattern as in previous years: principally policy development, advice giving, and complaint investigation.

Of these three, policy development has been the most time-consuming as I have worked on a variety of issues that Council referred to me or that still required attention as a result of the work of the Bellamy Recommendations Steering Committee and the coming into force in January 2007 of *COTA*. This work is detailed below and included the development of recommendations for further refinements to the *Code of Conduct for Members of Council* (“*Code of Conduct*”) and the *Council Code of Conduct Complaint Protocol* (“*Complaint Protocol*”). It also led to a recommendation that there be a separate Code and Complaint Protocol for members of local boards. As well, I am presenting proposals to Council at its July meeting for a policy regulating donations to and sponsorships of community events organized or run by Members of Council. This assignment was a particularly difficult one given the wide range in both the extent to which Members are involved in community events in their Wards and their views about the legitimacy and extent of donations and other forms of support for those events.

So far this year, the number of occasions on which Members seek advice from my office continues to grow and this has been reassuring. Meanwhile, the number of formal complaints received is at the same level as 2007. In fact, I have reported to Council on only one complaint during the first half of 2008. That was on a complaint filed during the 2006 Municipal Election campaign and my report was that there had indeed been a violation but that Council should not impose a sanction on the Member as it resulted from an error of judgment made in good faith. By receiving (though not adopting) my report, Council in effect supported that recommendation.

The position of Integrity Commissioner continues to be a part-time one (with one invaluable Administrative Assistant, Carol Birkett). So far in 2008, there has been no reason for re-evaluation of that aspect of the office. I had expected extra work as a result of the 2007 extension of the jurisdiction of the office to cover members of local boards (restricted definition). However, aside from the development of a separate Code and Complaint Protocol for local board members, this has generated no extra work on either the advice or complaint side.

The task of getting the Office of Integrity Commissioner up and running effectively has been challenging and exciting. In my mind, one of the key indicators of whether I have been fulfilling my mandate has been the extent to which Members seek advice on their responsibilities under the *Code of Conduct*. This is something that I have mentioned in all of my general reports to Council and it has been particularly satisfying over the past eighteen months to see the growth in that critical part of the work of the office. I have also worked as far as possible within confidentiality constraints to convey to other Members (and also City staff and the public) the kind of advice that I have provided. This has formed part of my annual reports to Council and features on the Samples of Advice Given segment of my website.

Despite a spike in 2006 (in part related to the fact that this was a Municipal Election year), the statistics on formal complaints have remained static (and, in my view, low), and my investigations over the four years have not revealed any systematic patterns of misconduct. Certainly, there have been a number of instances in which Members have violated the *Code of Conduct* but I have only once recommended that Council impose a sanction on a Member, and Council, in its collective wisdom, did not accept that recommendation. While there is obviously no necessary connection between the absence of complaints and acceptance of and adherence to the *Code of Conduct*, the statistics do provide some measure of reassurance.

I do, however, suspect that there is one area where there may well be underreporting of complaints. Staff are extremely reluctant to complain formally when Members overstep the bounds of what is permissible in the interaction between Members and the public service. However, it is almost certainly the case that these kinds of difficulties will diminish not through more aggressive use by Staff of the Integrity Commissioner's complaint jurisdiction but by a gradual changing of culture and attitudes. The advent of the Ombudsperson may also have a salutary effect.

Throughout my four years, policy development has been a significant part of my work as Integrity Commissioner. Much of it has involved ongoing efforts to refine the *Code of Conduct* and *Complaint Protocol*. The impetus for this has come from a variety of sources: references from Council; the recommendations of the Bellamy Commission; the imperatives of *COTA*; suggestions from individual Members, Assistants to Members and City Staff; as well as my own initiatives. Only time and experience under another Integrity Commissioner will tell whether the *Code of Conduct* regulates Members' conduct in a way that is consistent with early 21<sup>st</sup> century conceptions of what is acceptable and ethical behaviour on the part of elected officials. That is also so in terms of whether it strikes an appropriate balance in the spectrum between the tyranny of excessive detail at one end and the lack of practical guidance in broad statements of principle at the other. Similarly, only more experience will reveal whether the revisions to the *Complaint Protocol* balance appropriately the rights to procedural fairness that Members possess when they are the subject of a formal complaint and the importance of not putting inappropriate roadblocks in the path of those members of the public, staff and other Councillors who wish to make a formal complaint.

In the area of substantive policies involving issues of integrity and ethics, there have been a number of significant developments over the past four years. This demonstrates a considerable degree of commitment on the part of Council and the City's public service to improving the quality of policies regulating ethical behaviour or having ethical components. In particular, Council has adopted new policies on the hiring of relatives of Members of Council, Members acting as references for persons applying for a position with the City of Toronto, the appropriate relationship among Members of Committees of Adjustment, and Members of Council and City Staff, lobbying, and the involvement of Members in issues arising in another Member's Ward. In all of these, I had some involvement either in preparing and presenting the relevant report to Council or as a consultant to those with the carriage of the relevant file. I am also optimistic that Council

will add to this list at its July meeting by the adoption of a new and detailed Councillor Expense Policy and the proposals for a policy on donations to and sponsorship of Councillor organized community events.

However, I do not want to give the impression that all necessary work has taken place under my watch. Far from it! While regulation of ethical behaviour will inevitably continue to evolve, there are in fact several outstanding issues that deserve consideration and, in most instances, action. Towards the end of this final report, I identify and discuss what in my view are the issues warranting attention in the short term.

## **Policy Development and Other References from Council**

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

A number of various proposals for changes to the *Code of Conduct* and the *Complaint Protocol* will be before Council at its July meeting. These are the product of collaborative work between my office and various officials in the City Manager's Office and the City Clerk's Office as well as the City Solicitor.

They call on Council to adopt separate *Codes of Conduct* for members of local boards (restricted definition) – one general and one for those that adjudicate – as well as a separate *Complaint Protocol* for all local boards (restricted definition). This proposal stemmed from the realization that the Members' *Code of Conduct* and *Complaint Protocol* was not an easy fit for members of local boards and a sense that members of local boards would be better informed if they had their own *Code of Conduct* and *Complaint Protocol*. The development of a separate *Code of Conduct* for boards that adjudicate also built on the work done by the Auditor General in his 2007 report on the North York Committee of Adjustment.

The Report also contains other proposals for change to the Members' *Code of Conduct* and *Complaint Protocol* resulting from Councillor initiatives that Council referred to my office for consideration. In recognition of the reality that it is virtually impossible to conduct an effective investigation of an incumbent Member during an election campaign and the potential impact that groundless politically-motivated complaints can have on re-election prospects, the Report recommends that there be a moratorium on complaints against incumbent Members of Council in an election year from Labour Day until the new Council is sworn in. As well, the Report recommends the extension of the category of permissible gifts and benefits to include conference expenses paid by conference organizers when the Member is attending either as an official representative of the City or to speak. Finally, in order to facilitate early seeking of legal advice when it will assist a Member who is the target of a *Code of Conduct* complaint, there is a recommendation that a Member should be entitled to charge her or his office expense account up to \$500 for an initial hour long consultation with a lawyer

In contrast, the Report rejects another motion referred to the Executive Committee for evaluation – a proposal to repeal the provision in the *Code of Conduct* regulating inappropriate Member interaction with lobbyists. There is no justification for the removal

of a provision that penalizes Members who knowingly communicate with unregistered lobbyists or lobbyists in violation of the Lobbyist Code of Conduct. Reluctantly, I am also heeding the City Solicitor's legal advice and reporting to Council that there are legal impediments with implementing its approval in principle of inclusion within the *Code of Conduct* of a general conflict of interest provision. I comment on this issue in greater detail later in this Report.

#### Donations to and Sponsorships of Community Events Organized by Members

During 2007, as a result of communications from my office and the Director of Council and Support Services, Members became aware that in taking donations in money and kind for community events staged in their Wards, they were in violation of Article IV ("Gifts and Benefits") of the *Code of Conduct*. Donations and sponsorships of this kind are gifts and benefits and they were not included in the list of permissible gifts and benefits in Article IV.

In the course of considering my Annual Report for 2006, Council referred this issue to me for consideration. Acting on the recommendation of the Executive Committee, at its December 2007 meeting, Council adopted a report in which I proposed a change to Article IV to include donations and sponsorships within the list of permissible gifts and benefits and, as an interim policy, to allow Members, subject to reporting requirements, to accept sponsorships and donations up to \$5,000 an event.

Over the next few months, I consulted with Members on this issue and worked closely with the City Clerk's Office and, in particular, the Director of Council and Support Services to develop a permanent policy for donations to and sponsorships of community events. That policy is also coming before Council at its July meeting with the endorsement of the Executive Committee. It recognizes the value of Councillor-organized community events but also reflects the dangers that lurk in an unregulated environment. Like all other forms of gifts and benefits, donations and sponsorships court the risk of becoming in both perception and reality payoffs for favours already rendered or being sought. Not only is there the danger that they can buy influence but, more insidiously, there can also be a perception that it would be folly not to respond to a Member's request for assistance. Particularly, in an election year, there is also the problem of delineating where going about the business of the Ward ends and campaigning begins. Indeed, unless a clear line is drawn, Members run the risk of having their "community events" subjected to the time-consuming and costly scrutiny of a compliance audit under the *Municipal Elections Act*.

As a consequence, the recommended policy places a premium on transparency in the form of approval and reporting requirements, imposes an annual limit of \$10,000 applicable to both cash and in-kind donations and sponsorships from all sources, prohibits donations from lobbyists, and severely limits donations to community events in an election year, prohibiting them outright after a Member has filed for re-election and preventing their use for new or first-time events during an election year.

### Involvement in Other Policy Initiatives

During the past six months, I have also been involved in three other policy issues of relevance to the role of the Integrity Commissioner. The City Clerk's Office consulted with me on aspects of the report recommending a revised Councillor Expense Policy coming before Council at its July meeting. I also had discussions with those involved in the City Manager's Office with developing a new Human Rights and Harassment Policy and with the creation of an appropriate structure within which the City's five transparency and accountability officers should operate. I comment specifically on both these matters later in this report.

### **Complaint Investigation and Reporting**

#### Statistics – January 1, 2008 to June 30, 2008

Formal Complaints Received:	5
Informal Complaints Received:	0
Settled, Withdrawn or Abandoned:	0
Rejected as Beyond Jurisdiction:	1
Rejected as Frivolous or Vexatious, Made in Bad Faith or Without Substance:	0
Rejected after Formal Investigation:	0
Sustained:	0
Still under Investigation (as of June 30, 2008):	4
Complaints by Staff:	1
Complaints by Public:	4
Complaints by Members:	0
References by Council	0
Members Complained Against:	5

Commentary

The six-month statistics for complaints filed during 2008 are roughly parallel to those for 2007 with five complaints filed during that period. Of these, four are still under investigation as I am writing this report and I also have four pending from previous years. I anticipate that I will finalize almost all before I leave office on August 31.

All five complaints filed so far in 2008 have been by members of the public against Members of Council. There have still been no complaints filed against members of local boards (restricted definition).

To this point in 2008, I have finalized only two complaints. In one, I rejected the complaint on the basis that it did not come within my jurisdiction. In the other, I found that there had been a violation of the *Code of Conduct* in the form of an improper receipt of a gift but recommended to Council that it not impose any sanction as it resulted from an error of judgment made in good faith. Council voted to receive rather than adopt my report. While in effect this meant that it imposed no sanction, this action was troubling in terms of the credibility of the office, particularly as it was the second time that this had occurred in a twelve-month period.

**Advice Given**

Statistics – January 1, 2008 to June 30, 2008

Members of Council

Advice Sought:	50
Members Seeking Advice:	29
Informal Advice:	44
Formal Written Advice:	6

Citizen and Staff Inquiries

Citizen:	80
Staff:	13

---

<sup>1</sup> Four remain under investigation and, on the fifth, I reported to Council that there had been violation of the *Code of Conduct* but recommended that Council should refrain from taking any action on the basis that the violation resulted from an error of judgment made in good faith. Council received my report.

## Commentary

In my 2007 Annual Report, I reported favourably on the fact that there had been over a one hundred per cent increase in the number of requests for advice coming from Members of Council. There were fifty-five requests from 34 different Members. As of June 30, 2008, the statistics had almost already reached the 2007 figures. That was very encouraging. As yet, there have been no requests for advice from members of local boards (restricted definition) and, indeed, only one citizen inquiry regarding the conduct of a member of a local board (restricted definition). More generally, citizen and staff inquiries have been running at about the same rate as in 2007.

## Samples of Advice Provided

- Q.** A citizen has asked me to assist in an issue arising in another Member's Ward. The local councillor is in effect assisting someone who has opposing interests to the citizen who has approached me. May I help that citizen? If I do, can I call upon City staff to attend a meeting in the Ward?
- R.** If the Ward Councillor will not assist for whatever reason, you may intervene provided you give the Ward Councillor a heads up and an opportunity to deal with the matter. City Staff may attend a meeting organized in the Ward but you cannot compel them to do so. They are obliged to consider the urgency of the request, the availability of personnel, and other work programme priorities.
- Q.** A citizen in my Ward has asked me to act as reference on his behalf for a position that the citizen is seeking with the City. I presented him with a plaque at a Residents' Association Awards evening and we chatted briefly afterwards. Apart from that, I have no other knowledge of the person.
- R.** In terms of the policy on Members' providing references for those seeking positions with the City, this is not a relevant relationship. Do not agree to the request.
- Q.** A services organization in my Ward is organizing an event and has asked me to support its approach to a business for an in-kind donation to the event. May I lend this kind of support?
- R.** There is no prohibition on Members' approaching local businesses and encouraging them to lend this kind of support to community groups. However, you should not do so if there is any real danger that the business will see this as being in any way the cost of securing support from you for any form of permission or preference that business may be seeking from the City (or even as a payback for "past favours").
- Q.** A business has approached me with a request that I include an advertisement for the business in my next newsletter. They have offered to pay. I am not sure whether I want payment but am prepared in any event to place the advertisement for free as I believe this business is a great corporate citizen in my Ward. Please advise.



- R. Do not agree irrespective of payment. To include the advertising free of charge would be using the resources of the City (your Expense Account which is paying for the newsletter) for other than the purposes of the Corporation: Article VI of the *Code of Conduct*. To accept payment would involve an inappropriate receipt of a gift or benefit (Article IV) and worse if you still claim the whole cost of producing the newsletter from the City (*Criminal Code*). In any event, using your newsletter to promote a business, however worthy, is improper use of influence: Article VIII.

## **Gifts and Benefits Reporting**

As was the case in 2007, my office has received very few gifts and benefits reports during the first half of 2008 – two reports of donations to community events under the interim policy governing receipt of support for such events, and one other. This is far fewer than expected. It may, of course, reflect the reality that gifts worth over \$300 to Members of Council are a very rare event. On the other hand, it may mean that the policy is not working!

## **Education**

Aside from the educational spin-off from giving advice to Members on specific matters and maintaining the Samples of Advice Provided file on my website, I did not undertake any formal educational initiatives during the first half of 2008. It is, however, my expectation that I (though more likely my successor) will be able to team with the City Clerk's Office in whatever programmes that office develops for educating Members about the new Councillor Expense Policy (assuming Council approves it at its July meeting). That will provide an opportunity to inform Members of Council and their staff about any changes to the *Code of Conduct* and *Complaint Protocol* that Council adopts in July as well as the detail of the Donations and Sponsorships Policy (once again, if approved).

## **Other Aspects of My Work**

Two other Ontario municipalities (Vaughan and Oakville)<sup>2</sup> now have Integrity Commissioners and I have had discussions with each of them. As well, the City of Hamilton is in the course of recruiting an Integrity Commissioner.

As of January 1, 2008, the City of Toronto acquired another Integrity and Transparency official. Professor Lorne Sossin of the Faculty of Law at the University of Toronto became the City's first closed meeting investigator charged with investigating complaints that City Council or any of its committees has met improperly in closed session. I met with Professor Sossin to discuss his work. I had also been hoping during my last year as Integrity Commissioner to interact with the City's first Ombudsperson in the development of a working relationship between the two offices and, if necessary, in the formulation of operational protocols. For whatever reason, the process of appointing that official has taken longer than was originally anticipated.

---

<sup>2</sup> Meaford and Woodstock appointed Integrity Commissioners in 2006.

In the period under review, I spoke at two programmes about the work of my office and, in particular, its legal dimensions:

- Osgoode Hall Law School Professional Development Programme, 2<sup>nd</sup> Annual Municipal Liability Conference; and
- Ontario Bar Association Municipal and Administrative Law Sections and Association of Municipal Managers, Clerks and Treasurers of Ontario Dinner Meeting on Ethics, Administrative Law and Good Government.

I maintained my links with CCOIN (Canadian Conflict of Interest Network), an important information sharing resource for Integrity and Ethics Commissioners across the country, and the Centre for Ethics at the University of Toronto.

I was also named as a respondent in a complaint under the *Ontario Human Rights Code*, the allegation being that I had discriminated on the basis of disability against a citizen wishing to make a complaint against a Member of Council. As that matter is still with the Human Rights Commission, I cannot make any further comment at this stage

## **Budget**

As in previous years, the 2008 budget for my office was \$200,000. As of June 30, 2008, the financial statements (set out in Appendix I) show that there had been expenditures of \$67, 488, all but \$2440.87 on salary items. This suggests that, as in the previous three years, there will be a year end surplus. However, that is subject to the usual qualification that this estimate does not take account of the costs of any major investigation and particularly one where the Integrity Commissioner needs to proceed by way of an inquiry under the terms of the *Public Inquiries Act*.

## **Outstanding Issues**

As I am about to leave the City, I am conscious of the fact that there are still outstanding issues about the mandate of the office of Integrity Commissioner and the way in which it operates. I am therefore taking the opportunity that this end of term report presents to identify some of those issues and my views about them.

### 1. Conflict of Interest

The *Code of Conduct* does not include a general conflict of interest provision. In September 2006, Council passed a motion adopting in principle the proposition that there should be a general conflict of interest provision in the *Code of Conduct*. However, that was expressly made subject to a report back from the Integrity Commissioner following discussions with the City Solicitor as to the legality of including such a provision in the *Code of Conduct*.

The City Solicitor reported to the Integrity Commissioner that it was not legally permissible to include a general conflict of interest provision in the *Code of Conduct*. To do so would conflict with the provisions of the *Municipal Conflict of Interest Act* and the rules and processes created in that Act. I accepted that advice and reported it to Council.

It is my strong recommendation that Council either seek authority within *COTA* to create its own regime for dealing with conflict of interest, including the ability to add a general conflict of interest provision to the *Code of Conduct*, or seek appropriate amendments to the *Municipal Conflict of Interest Act* to achieve the same objective.

The *Municipal Conflict of Interest Act* is an outdated statute. It forces all disputed issues involving conflict of interest into the regular courts with all the attendant costs. In so doing, it acts as a strong disincentive to those who might otherwise complain. In the event that it is used, Members of Council are also forced into this expensive forum and are obliged to use their own money to defend themselves. Councillors who are found in violation face loss of office, a period of disqualification from running again, and repayment of any gains obtained. The judge can only let a Member off if he or she determines that the violation was committed through “inadvertence” or “by reason of an error of judgment.” The Act contains no provision for advance clearance and municipalities cannot reimburse members for the cost of seeking advance legal advice or defending proceedings under the Act. On many occasions, Members rather than run the risk or pay for advice will simply declare a conflict so as to be safe rather than sorry. Over-caution in making declarations is not in the public interest or the interests of that Member’s constituents.

The Act is confined to regulating conflicts of interest that arise in the course of a Member’s participation in the proceedings of Council or one of its committees or boards. It does not extend to conflicts that arise in other contexts such as conflicts that can arise in the use of the Councillor Expense Account. It is also restricted in its operation to direct and indirect pecuniary interests of the Member personally and a limited range of family members. It does not prohibit participation and voting in relation to a whole range of persons coming within the reach of any contemporary conception of inappropriate conflicts such as business partners and close personal friends. Thus, for example, weeks after an election, a Member could participate in and vote on a matter that would be of direct financial benefit to her or his campaign manager. In short, the Act’s reach is woefully under-inclusive.

The commonly accepted justification for not reimbursing Members for the cost of seeking advice on conflict of interest or for defending allegations of violation of the Act is that issues about conflicts of interest are personal issues, and not something arising out of a Member’s role as an elected official. Given the lack of legal clarity even under the existing statutory provisions, I regard this position as highly problematic. At the very least, Members should be able to charge their Councillor Expense Account for the costs of seeking legal advice on a possible conflict of interest, and the legislation should be changed to allow that to happen. Indeed, as suggested above, there should also be

provision for authoritative pre-clearance and subsequent immunity provided the Member has revealed all relevant information.

## 2. Human Rights and Harassment Complaints

One of the principles underlying the Integrity Commissioner's complaint jurisdiction is that the Integrity Commissioner should not undertake an investigation where the subject of the complaint is covered "by other legislation or a complaint procedure under another Council policy." This is found in section 3 of the *Complaint Protocol* which elaborates by the use of examples.

This principle makes a lot of sense where, for example, the alleged conduct of the Member involves possible offences under the *Criminal Code*. These are matters that should be left to the police and, indeed, not only section 3 of the *Complaint Protocol* but also Section 164 of *COTA* recognizes this. It makes far less sense where, as in the instance of the *Municipal Conflict of Interest Act*, the designated complaint mechanism is out of date and not easily accessible.

One area of particular concern is that of human rights and general harassment complaints against Members. The *Code of Conduct* contains a prohibition on "Discreditable Conduct" (Article XVIII) that in large measure is an anti-discrimination and anti-harassment provision. The City also has an anti-discrimination and anti-harassment policy. In fact, Council approved an updated and more expansive version of that policy at its June meeting. While that policy says little specifically about the obligations of Members, it is intended to apply to them. The policy also provides for a process of mediation of complaints and the use of an external resource to handle contested issues.

My reading of section 3 of the *Complaint Protocol* is that I should decline jurisdiction whenever I receive a complaint of *Human Rights Code* discrimination and also non-*Code* harassment against a Member of Council. There is an existing City policy with its own procedure. However, that does cause a number of concerns. Is it appropriate to deny members of the public and staff access to the Integrity Commissioner when they have complaints of this kind? What objectives are served by excluding harassment and discrimination complaints from the jurisdiction of the Integrity Commissioner and instead relying on external consultants for assisting with contested matters? What should happen (as has been the case) where a complaint to the Integrity Commissioner raises a mixture of issues one of which might involve discrimination or non-*Code* harassment? I suspect that this situation also increases the possibility that determined complainants will forego the City's internal processes and attempt to invoke the processes under the *Ontario Human Rights Code*, particularly now that, as of this month, there is provision for direct access to the Human Rights Tribunal of Ontario. If the Tribunal accepts such cases, it may well be at great cost to the City.

In short, my position is that the Integrity Commissioner should be able to accept such complaints. While the current list of sanctions in the *Code of Conduct* does not include some of the more typical human rights remedies, it should be possible to readily compose

a provision that would give the Integrity Commissioner authority to make appropriate recommendations for that kind of relief and, in particular, various forms of compensation.

### 3. Behaviour in Council and at Council Committees

While section 3 of the *Complaint Protocol* does not make any specific reference to complaints about the behaviour of Members at Council, I have taken the position that the control of the behaviour of Members is the responsibility of the Speaker under the Council's procedure by-law and as part of a parallel with parliamentary conventions. As a consequence, I have rejected such complaints as beyond my jurisdiction. Only if specifically requested by Council would I become involved in that kind of issue.

In principle, the same should be true of the behaviour of Members at committees of Council or on boards. However, particularly as this is the legislative context in which Members deal directly with members of the public, I am concerned that leaving issues of this kind up to the Chair is not completely satisfactory. Indeed, it is not at all satisfactory where the Chair is the alleged perpetrator of the misconduct. Careful consideration should be given to whether the Integrity Commissioner should have a role in dealing with such complaints, either by way of direct access or on reference from the Speaker in response to a complaint filed with her or his office.

### 4. Municipal Election Complaints

The Integrity Commissioner's jurisdiction over the behaviour of incumbents during the course of a Municipal Election campaign is very limited. It is pretty much restricted to improper use for campaign purposes of City resources (including a Member's own staff and office expense account) and improper use of influence on City staff with election-related responsibilities (such as sign rules enforcement). My exercise of that jurisdiction will also be affected if Council adopts at its July meeting the recommendation that there should be a moratorium on the filing of complaints against incumbents from Labour Day until the new Council is sworn in.

However, that does not mean that the situation is satisfactory. I support fully the position of the City Clerk and the outgoing Director of Election and Registry Services that amendments are sorely needed to the *Municipal Elections Act* to clarify many issues about behaviour of both incumbents and all other candidates during the course of a Municipal Election. These should include the creation of a complaint mechanism that will allow the speedy and efficient resolution of a whole range of election-related complaints during the course of the campaign. The legal status of incumbents during an election campaign should also much more closely parallel that of Members of Parliament and of the Legislative Assembly during a parliamentary election. In other words, rather than continuing as Members of Council during the whole of the election campaign, their term of office should, save for certain specified and circumscribed contingencies, cease for some or all of the campaign period. There also very obviously needs to be greater clarity on the whole issue of campaign funding, including the role of BIAs during an election, and attention to the appropriateness of the current compliance audit processes.

## 5. Financial Disclosure

When the City created the position of Integrity Commissioner in 2004, it was already pursuing with the province the possibility of legislative authority to create an Integrity Commissioner Office modelled after that of the provincial Integrity Commissioner. A key feature of the provincial model is the Integrity Commissioner's annual review of the personal finances of Members, their spouses and children. Indeed, financial disclosure regimes of various kinds exist as part of the ethics codes in all the provinces and territories of Canada (bar one). Recommendation 39 of the Bellamy Commission Report urged Council to consider expanding the scope of the Integrity Commissioner's powers to "allow confidential review of the personal expenses of councillors." However, *COTA* did not include any financial disclosure regime.

At its February 2007 meeting, Council referred to the Integrity Commissioner a motion to the effect that it adopt this kind of financial accountability regime. In the regulation of conflicts of interest, financial reporting of this kind is a very useful tool. Work on such initiative should proceed in tandem with that on adoption and implementation of a modern and workable conflict of interest policy.

## 6. Members' Staff

In September 2006, Council approved in principle a recommendation that the Members *Code of Conduct* apply to Council Members' Staff and directed the City Manager, in consultation with the City Solicitor, the Executive Director for Human Resources and the Integrity Commissioner, to report to the Executive Committee on the steps required to implement that policy.

As I understand it, that work is still proceeding and is complicated by the range of employment contracts under which Council Members' Staff operate. In the meantime, Council Members' Staff continue to be governed by the general Staff Conflict of Interest Policy.

Council Members' Staff are very different from other members of the City of Toronto public service. They each answer to their Council Member and continue in their positions pretty much at the pleasure of that Council Member. In virtually everything that they do, they act as the agents of their Council Member and their role is to perform those aspects of the work of their Member that the Member has delegated to them. As opposed to members of the regular public service of the City, they have no obligation of political neutrality in the work they do or positions they take. However, when they stand in the shoes of their Member, they should personally be bound by the constraints that the *Code of Conduct* places on that Member. Indeed, on occasion, in my investigations of a complaint against a Member, it was virtually impossible to segment the actions of the Member from those of her or his staff member.

While this does not mean necessarily that Members' Staff should be bound to the same *Code of Conduct* as their Members, it does point clearly in the direction of at least

devising a Code of Conduct for Council Members' staff based more closely on the Members' Code of Conduct and less on the general Staff Conflict of Interest Policy, a policy which is not always a comfortable fit for Members' staff. These considerations also speak to the Integrity Commissioner having jurisdiction over complaints against Council Members' staff.

#### 7. Imposition of Sanctions

From time to time, I have heard the comment made that my office will remain toothless and lack true independence as long as the incumbent does not have the power to impose sanctions on Members who have violated the *Code of Conduct*. Indeed, as I understand it, Hamilton and Vaughan, in creating the office of Integrity Commissioner, have delegated Council's power to impose sanctions on Members to that officer.

Even assuming such a delegation of authority is legally permissible, I do not believe that it is a wise idea. No other federal, provincial or territorial ethics commissioner possesses sanctioning authority. In virtually every other setting, this power is reserved to the legislative assembly. Recommendation 48 of the Bellamy Commission was very explicit on this. The Integrity Commissioner should not have this power. Why?

In my view, unless Council as a whole retains overall responsibility for ensuring the ethical behaviour of its Members, the success of the enterprise is jeopardized. Legislative bodies of this kind have customarily been responsible for the supervision and sanctioning of their own members. Effective and responsible self-governance in such matters is indicative of not only the maturity of the institution but also the collective acceptance of the standards of conduct that the assembly has laid down for itself and its members. Where someone else such as an Integrity Commissioner exercises that power, it becomes too easy for the assembly to distance itself from the actions of its official and never to have to confront directly its self-governing responsibilities. In contrast, when the assembly accepts the Integrity Commissioner's recommendations, it exercises that responsibility and, if it chooses not to accept the recommendations, it exposes itself to direct public scrutiny in a way that carping from the sidelines about sanctions imposed directly by an Integrity Commissioner would not.

#### 8. Independence

In a formal sense, the Integrity Commissioner's lack of final decision-making power on the imposition of sanctions does detract from the independence of the office. That makes it even more important that the City or the province provide the Integrity Commissioner with other guarantees of independence.

Under Section 159(1) of *COTA*, the Integrity Commissioner is

...responsible for performing **in an independent manner** the functions assigned by city council with respect to the application of the...

*Code of Conduct* and other City procedures, rules and policies governing the ethical behaviour of Members and members of local boards. Section 158(2) of *COTA* also cements one of the features of the Toronto Integrity Commissioner model. The Integrity Commissioner reports directly to Council, not to or through the Mayor or City Manager.

However, *COTA* does not give any further guidance on what is involved in the obligation of independence nor legislate any formal guarantees of independence such as tenure of office, financial security, and immunity from administrative and executive interference. Indeed, it states no more than that the Integrity Commissioner is not required to be a city employee.

For various reasons, I have in fact been a city employee for four years having had an initial one year appointment followed by two and one year renewals. Personally, I have not regarded the lack of any real security of tenure as a problem for the independent exercise of my functions. However, Council appointed me before the enactment of *COTA* and, in my view, given the now statutory status of the office, the time has come to make formal provision for safeguarding the independence of not only the office of Integrity Commissioner but also the other transparency and accountability officers.

The Bellamy Commission Report addresses this matter to the extent of recommending that the Integrity Commissioner should serve for a set term and be subject to dismissal only by a two-thirds vote in Council. That corresponds with my own views and I would go further and set the fixed term at either five or seven years with the possibility of one only renewal. This should be done either by way of the current biennial review of *COTA* or the City's by-law making powers.

In addition, the setting of the budget of the Integrity Commissioner and the other transparency and accountability officers should have a mechanism that is distinct from that for the rest of the City's public service. As part of this, the process of establishing the Integrity Commissioner's salary should be systematized and not simply be the product of negotiation at the time of appointment and thereafter from time to time. The Integrity Commissioner and the other accountability officers should also have freedom in the ways in which they spend their budgets subject, of course, to transparency and regular reporting and audit. In the absence of an office of the Speaker, the Integrity Officer's should operate for residual administrative purposes under the umbrella of the City Clerk's office and it is to that office that the Integrity Commissioner should continue to look for administrative and logistical support. It would also be very useful if the Integrity Commissioner had direct access to a committee or subgroup of Members for discussion of issues that are more directly the concern of Council (such as proposals for changes in the *Code of Conduct* and other policy initiatives on ethical matters).

## 9. Reporting on Complaints to Council

At present, when the Integrity Commissioner reports to Council on a complaint, generally on a finding that there has been a violation, Council processes that report in the same way



that it processes other staff reports. The Integrity Commissioner is obliged to appear and answer questions but has no right to make an initial statement introducing the report.

There are unsatisfactory elements to this. Indeed, there is an argument that in such matters the Integrity Commissioner's report should speak for itself and it is not appropriate for the Integrity Commissioner to appear whether to speak to the report or answer questions. This argument is given greater weight by Section 162 of *COTA* which obliges the Integrity Commissioner to only include in any report to Council

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

In those circumstances, as happened earlier this year, Members put the Integrity Commissioner in a very difficult position when they ask the Commissioner to provide further details or to justify an apparent failure to pursue a particular line of inquiry.

If Council does not want to go so far as to give up its entitlement to question the Integrity Commissioner on the content of her or his reports on complaints, then, at the very least, the process should be changed to allow the Integrity Commissioner to introduce the report at Council and Members should both exercise restraint in the kinds of questions that they ask and be aware of the constraints that *COTA* places on the Integrity Commissioner in responding to questions. This will, of course, require diligence on the part of the Speaker.

Given that it is Council that decides whether to impose any recommended sanction, Council should also be conscious of its obligations of procedural fairness to the Member who is the subject of the report. This almost certainly requires making provision in the procedural rules for an opportunity for that Member to at least address and make submissions to Council.

## **Conclusions**

After four years as Integrity Commissioner, I remain very satisfied that I agreed to serve in the office. It has been a great experience and I trust that I have been reasonably successful in getting the office up and running and operating on the basis of appropriate principles and procedures. I also leave the position convinced that it fulfills a vital role in protecting the interests of the City and its citizens in the ethical behaviour of Members of Council. Indeed, particularly when assessed in terms of the advice giving function, the office also protects Members and their self-interest in conducting themselves in accordance with public expectations of ethical conduct.

I also want to put on record again my gratefulness to the many people with whom I have had such a productive relationship during my time at the City and, quite frankly, without whom I would have been unable to function: the Mayor and a significant number of Councillors and their staff; the City Manager, the City Clerk, and the City Solicitor, and numerous members of their staff; the other accountability and transparency officers (the

Auditor General and the Lobbyist Registrar); and my two Administrative Assistants, Zorida Ali and Carol Birkett.

## **CONTACT**

David Mullan  
Integrity Commissioner  
Tel: 416-397-7770/Fax: 416-392-3840  
Email: dmullan@toronto.ca

## **SIGNATURE**

---

David J. Mullan, Integrity Commissioner

## **ATTACHMENT**

Appendix I: 2008 Budget and Expenditures