



**INTEGRITY COMMISSIONER
REPORT
ACTION REQUIRED**

**Report on Issues Arising Out of Operation of Members
Code of Conduct and Complaint Protocol**

Date:	June 16, 2008
To:	Executive Committee
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

Council has referred a number of aspects of the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)* (“*Code of Conduct*”) to the Integrity Commissioner: the possibility of including a general conflict of interest provision, a motion for the suspension of investigations in the six months leading up to a Municipal Election, a motion that Members who are the target of a complaint should be entitled to recover the costs of an initial consultation with a lawyer, and a request for recommendations for a policy permitting Members to accept donations and sponsorships for community events that they are organizing. Council has also referred to the Executive Committee a motion for the repeal of Article XIII of the *Code of Conduct* (“Conduct Respecting Lobbyists”).

In addition, there were a number of issues arising out of City Council’s adoption in 2006 of various revisions to the *Code of Conduct*. Most of these flowed from the work of the Bellamy Recommendations Steering Committee (“Steering Committee”), and the passage of the *City of Toronto Act, 2006* (“*COTA*”): whether to update and retain the original Schedule as part of the *Code of Conduct*, and whether there should be a separate *Code of Conduct* for members of local boards (restricted definition). Finally, as this Report is being presented at the same time as the Report on the Councillor Expense Policy, it became necessary to ensure that the provisions of the *Code of Conduct* were consistent with the recommendations in that Report.

This report deals with those matters. Its advice to Council is that there are legal impediments to inserting a general conflict of interest provision in the *Code of Conduct*.

It also rejects the proposal for the repeal of Article XIII (“Conduct Respecting Lobbyists”). However, it does recommend that there be a moratorium on the filing of *Code of Conduct* complaints against Members of Council in an election year from Labour Day until the new Council is sworn in. It also recommends that Council approve an addition to the *Code of Conduct Complaint Protocol* (“*Complaint Protocol*”) allowing Members who are the subject of a complaint to charge their Members Office Expense Budget for the cost of an initial hour long consultation with a lawyer to a maximum value of \$500.

The report also proposes the adoption of separate *Codes of Conduct* for members of local boards (restricted definition) – one general and one applicable to boards that adjudicate, as well as a separate *Complaint Protocol* for complaints against members of local boards (restricted definition). However, while the report favours the updating and distribution of the Schedule to the *Code of Conduct*, it recommends that it no longer be a part of the *Code of Conduct* but a separate stand alone document readily available for informational purposes and guidance to Members, their staff, City Staff and the general public. To ensure consistency with the recommendations in the Report on the Councillor Expense Policy, this Report recommends that Council approve a further addition to the list of permissible gifts and benefits: costs paid by conference, seminar and event organizers at which a member is a speaker or is attending in an official capacity. Finally, the Report contains a series of proposals for giving effect to Council’s policy that Members be allowed to solicit and receive donations and sponsorships for community events that they are holding in their Ward, subject to specific limitations.

RECOMMENDATIONS

The Integrity Commissioner recommends that Council:

1. Approve the two *Codes of Conduct* for members of local boards (restricted definition) set out in Appendices I and II of this report;
2. Approve the *Code of Conduct for Members of Council* set out in Appendix III of this report;
3. Approve the *Code of Conduct Complaint Protocol for Members of Local Boards (Restricted Definition) including Adjudicative Boards* set out in Appendix IV of this report;
4. Approve the *Code of Conduct Complaint Protocol for Members of Council* set out in Appendix V of this report;
5. Direct the City Manager to submit a report to the Executive Committee on extending the Indemnification Policy for Members of Council and Management and Excluded Staff adopted by Council on November 24, 2005 to members of local boards;

6. Not proceed at this time with the proposal to include a general conflict of interest provision in the *Members Code of Conduct*;
7. Not adopt the motion repealing Article XIII of the *Code of Conduct* (“Conduct Respecting Lobbyists”);
8. Approve the inclusion of a provision in the *Code of Conduct Complaint Protocol for Members of Council* placing a moratorium on the filing of *Code of Conduct* complaints against Members seeking re-election from Labour Day in an election year until the new Council is sworn in;
9. Approve as part of the policy governing Members’ use of their Office Expense Budget that Members of Council who are the subject of an Integrity Commissioner investigation be entitled to charge against that budget the cost of an initial legal consultation but restricted to one hour and a maximum value of \$500;
10. Approve the following addition to item (f) in the list of permissible gifts and benefits:

...or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity.
11. Approve the following addition to the list of permissible gifts and benefits provided for in Article IV of the *Code of Conduct*:
 - (i) sponsorships and donations for community events organized or run by a member or a third party on behalf of a member, subject to the limitations set out in the Policy on Council Member-Organized Community Events.
12. Adopt the following Policy on Council Member-Organized Community Events:
 - (a) Donations must be for specific community events held on a specific date or a specific series of dates. Members of Council should not seek donations in money or in kind for ongoing or new programs that have been or could be offered through City programs, and which have a separate donations policy.
 - (b) Support for the events (whether in money or in kind) shall not exceed \$10,000 annually (whether for a single event or multiple events). (This amount does not include moneys or goods collected at any event in support of a charity or other cause if those donations go directly to the charity or cause.)
 - (c) A member of Council or a third party acting on behalf of the member shall neither solicit nor accept support in any form from those registered as lobbyists with the City, or developers with any pending planning, conversion, demolition or sign

variance application. This prohibition extends to the negotiation of community benefits outside of the formal section 37 processes.

- (d) Members of Council must report to the Director, Council and Support Services, in a manner and form prescribed by the City Clerk, on the source, details and value of all donations for community events prior to the event (if it is anticipated that the value of donations will exceed \$500) and a statement of accounts subsequent to the event if the value of the donations has exceeded \$300). This report shall include a genuine estimate of the value of in-kind donations. All donations and expenses paid for by donations are subject to the same administration, accounting and disclosure requirements as expenses charged to Office Expense Budgets.
- (e) All donation cheques should be made out to the City of Toronto and accounted through the City Clerk's Office. Members of Council or third parties acting on behalf of members should not hold or administer donations in separate personal accounts.
- (f) Surpluses should be minimized with accurate estimation of event costs and requirements. Surpluses (including in-kind donations such as equipment) should be returned to donors or transferred to general Council revenue. Under no circumstances, can a surplus be used for a different community event and, in particular, in supplementation of a member's office operations. Any surplus will count against the member's \$10,000 annual limit in the year in which it is used or drawn upon. Multi-year donations are not permitted.
- (g) The City Clerk, in consultation with the Treasurer, will develop detailed procedures and guidelines regarding the receipt and accounting of donations for Council member community events, including the administration of surplus funds.
- (h) This policy does not affect the entitlement of a member of Council to
 - (i) use her or his office expense budget to run or support community events subject to the terms of the Councillor Expense Policy;
 - (ii) urge constituents, businesses and other groups to support community events staged by others in the member's Ward or elsewhere in the City;
 - (iii) play an advisory or membership role in any organization staging community events in the member's Ward; and
 - (iv) team with the City and its agencies in the staging of community events.
- (i) Under clause (h) members of Council should not handle any funds on behalf of these organizations and should remain at arms length from the financial aspects of these external events.
- (j) In an election year, a member of Council must not seek donations and sponsorships for any community event that has not been staged in the previous

two years nor accept donations or stage any community event supported by donations and sponsorships after he or she has filed nomination papers for election to any office in the City of Toronto.

A community event is considered to have been staged in the previous two years if it meets the following criteria:

- has a very similar, if not the same, event name/title
 - takes place at approximately the same time
 - has the same general purpose
13. Approve the removal from the *Code of Conduct* of the Schedule (“Role and Responsibilities of the Council Members and Staff”) and the two appendices on Acts governing conduct.
14. Authorize the Integrity Commissioner in consultation with the City Manager and City Solicitor to make additional technical amendments as necessary to the *Codes of Conduct* and *Complaint Protocols* to ensure a consistent style and to reflect the additional amendments authorized in the above recommendations and future amendments to these documents.

FINANCIAL IMPACT

The adoption of the recommendations in this Report will have no additional financial impact.

DECISION HISTORY

This Report results from motions that Council passed at its September 25, 26, 27 and 28, 2006 and February 5, 6, 7 and 8, 2007 meetings referring certain motions to the Integrity Commissioner for report back to Council, a motion requesting a report from the Integrity Commissioner passed at the December 11, 12 and 13, 2007 meeting of Council, as well as a motion that Council referred to the Executive Committee at its meeting of April 28 and 29, 2008. It also deals with issues arising out of the adoption at the September 2006 and February 2007 meetings of a revised *Code of Conduct* and amendments to the *Complaint Protocol*.

ISSUE BACKGROUND

Most of the work updating the *Code of Conduct* and the *Complaint Protocol* in response to the recommendations of the Bellamy Commission reports and the terms of *COTA* was completed at the September 2006 and February 2007 meetings of Council. However, there were aspects of that exercise that were not finalized at that time. These two meetings also spawned related issues that Council referred to the Integrity Commissioner. Thereafter, other issues arose involving the *Code of Conduct* (funding for community events and Members’ obligations when dealing with lobbyists) and were sent by Council

to the Integrity Commissioner or Executive Committee for a report. The objective of this report is to make recommendations to Council that will bring that work to an end.

COMMENTS

Code of Conduct – Members of Local Boards (Restricted Definition)

The 1999 *Code of Conduct* applied to the City’s agencies, boards and commissions. However, when Council established the office of Integrity Commissioner in 2004, it did not give that office any authority to deal with complaints against members of agencies, boards and commissions. In effect, there was a vacuum.

That changed with *COTA*. Not only was the City required to adopt a *Code of Conduct* for members of certain agencies, boards and commissions (now renamed “local boards (restricted definition)”) but the Integrity Commissioner was also given specific jurisdiction to take complaints against them.

As a consequence, at the end of 2006, Council renamed the *Code of Conduct* as the *Code of Conduct for Members of Council and Local Boards (Restricted Definition)*. To the extent that some of the provisions of the current *Code of Conduct* do not apply at all or exactly to members of local boards (restricted definition), Article II provides that it applies to local boards (restricted definition) “subject to any necessary (legal) modification.”

Even at that time, responsible officials in the Government Structures and Corporate Performance branch of the City Manager’s Office were of the view that consideration should be given to creating a stand alone *Code of Conduct* for members of local boards (restricted definition). For members of boards, the statement that the *Code of Conduct* applied subject to any necessary legal modification was confusing. It was also felt that members of local boards (restricted definition) would pay more attention to a *Code of Conduct* that was specifically tailored to their situation. I shared that view.

In the course of further consideration of this issue, it also became apparent that there was a category of local boards (restricted definition) for which the appropriate standards of conduct had different and additional dimensions: those local boards (such as committees of adjustment) that made decisions within the framework of a hearing or adjudicative process. Accordingly, the decision was taken to work on two separate *Codes of Conduct* for members of local boards (restricted definition): a general one and a second that reflected the particular responsibilities of the City’s adjudicative tribunals.

That work is now complete and I am recommending (in conjunction with the City Manager’s Office) that Council adopt the two *Codes of Conduct* for members of local boards (restricted definition) that appear in Appendices I and II of this report. If Council accepts that recommendation, the existing *Code of Conduct* will also require amendment to confine its operation to Members of Council. Appendix III contains that version of the

Code of Conduct and also incorporates some housekeeping revisions of a technical variety.

Complaint Protocol

The review of the appropriateness of the current *Code of Conduct* to local boards (restricted definition) also included a consideration of the *Complaint Protocol*. Here too, the recommendation is that there should be a separate *Complaint Protocol* for complaints against members of local boards (restricted definition). This *Complaint Protocol* applies to all local boards (restricted definition). However, it differentiates between adjudicative boards and all others in one respect by excluding the availability of informal settlement for complaints against adjudicative boards. All complaints against adjudicative boards must be made formally. The *Complaint Protocol* also provides that any attempt at informal resolution of complaints against members of all other local boards (restricted definition) take place through the Chair of the board and not by way of direct contact with the member concerned.

While the *Complaint Protocol* for members of local boards (restricted definition) includes the various costs provisions contained in the existing *Complaint Protocol for Members of Council*, there is also the question whether the Indemnification Policy for Members of Council and Management and Excluded Staff adopted on November 24, 2005 should extend to members of local boards (restricted definition). This issue merits further consideration and it is recommended that Council refer it to the City Manager for a report to the Executive Committee at a later date.

In addition, the modified *Complaint Protocol for Members of Council* set out in Appendix V incorporates various amendments approved by Council over the past two years, mainly relating to legal costs.

Conflict of Interest Provision

In my report to the September 2006 meeting of City Council, I expressed concern about the fact that the *Code of Conduct* did not include a general conflict of interest provision. I believed then and believe now that this is a serious omission. However, the City Solicitor advised me that a proposal that I had included in an earlier draft of revisions to the *Code of Conduct* to the Bellamy Recommendations Steering Committee was legally vulnerable because it potentially conflicted with the terms of the *Municipal Conflict of Interest Act*. The City Solicitor was also concerned about the vagueness of the term “apparent conflict of interest” that I also wanted to include in the general conflict of interest provision.

As a consequence, the version recommended to Council did not include a conflict of interest provision. Rather, it contained a statement in the Preamble to the effect that Members should avoid “conflicts of interest, both apparent and real.” Council did adopt that. Council also approved a recommendation that

...the City urge the appropriate authorities within the provincial government to either modernize the Municipal Conflict of Interest Act or confer on the City of Toronto authority to create its own conflict of interest regime in place of or supplementary to that Act.

I have no information on whether those steps have been taken.

Council also took up the issue of a free-standing conflict of interest provision and, while rejecting the concept of “apparent conflict of interest”, passed a motion approving in principle the inclusion of a conflict of interest provision in the *Code of Conduct* and directing the Integrity Commissioner in consultation with the City Solicitor to report back to the Executive Committee on “possible provisions.”

In response to that direction, I proposed variations of the provision that I had placed before the Steering Committee. However, the City Solicitor advised me again that there were still problems in terms of potential conflicts with the *Municipal Conflict of Interest Act*. More generally, her advice was that Council stay away from a specific conflict of interest provision until such time as that Act was amended or the City obtained specific authority to legislate on conflict of interest. She also pointed out that there were a number of provisions in the existing Code that in effect prohibited certain kinds of conflict of interest such as some of the provisions in the Gifts and Benefits Article.

I have accepted that advice and am not placing before Council a “possible provision” on conflict of interest. That does not mean that I find the current situation acceptable. The Act is outdated, under-inclusive in its prohibitions on participation and voting, and fails to regulate conflicts of interest arising outside of matters coming before Council or a committee of Council. Thus, for example, participating and voting on a matter that benefits a campaign manager is not a prohibited conflict of interest. The Act also does not regulate conflicts that can arise out of a Councillor’s use of his or her office expense account. These are serious deficiencies that call out for legislative change.

Article XIII of the *Code of Conduct* – “Conduct Respecting Lobbyists”

At its meeting of April 28 and 29, 2008, Council adopted a motion amending Article XIII of the *Code of Conduct* (“Conduct Respecting Lobbyists”). These amendments had two principal objectives: to update the terminology of the Article to correspond with the language and terms of the Lobbying By-law and to make it clear that Members would be responsible for dealing with unregistered lobbyists and lobbyists otherwise in violation of the Lobbyist Code of Conduct only where they were aware of the violation in question.

These changes were the product of much discussion among the Lobbyist Registrar, the City Solicitor, the City Manager, the Integrity Commissioner, as well as Members of Council. Article XIII now represents a reasonable set of expectations for the conduct of Members when dealing with lobbyists.

Nonetheless, Council also referred to the Executive Committee a motion that Article XIII be repealed and that there be no provision in the *Code of Conduct* regulating the

interaction of Members with lobbyists. I reject that proposal out of hand. It would be irresponsible for Council to absolve its Members of all responsibility for knowingly dealing with those in violation of the Lobbyist Code of Conduct and the registration requirements of the Lobbying By-law.

If the Lobbyist Registry and the Lobbyist Code of Conduct are to work effectively, Members have a role to play in supporting the objectives behind this regime. It is simply unacceptable for Members to wash their hands of that by asserting that this is a matter simply between lobbyists and the Lobbyist Registrar. In Recommendation 126 of her Report, Justice Bellamy stated that the Lobbyist Registrar should work closely with the Integrity Commissioner. The principal reason for that is to ensure that Members not only are aware of the obligations put upon those who lobby them and City staff but also accept responsibility for knowingly aiding and abetting those in violation of the regime's demands. To relieve them of that responsibility by repealing Article XIII would undercut a significant aspect of the regime and detract from its effectiveness as an important regulatory tool.

Complaints During an Election Year

At its February 2007 meeting, City Council also referred to me for a report a motion to the effect that the Integrity Commissioner not investigate complaints brought against Members of Council within six months of a Municipal Election but postpone investigation until after the election has taken place.

As I understand it, the reasoning behind this motion is that, in many instances, complaints brought against Members during the period leading up to an election will often be politically motivated and brought as part of an opponent's campaign strategy rather than out of any genuine sense of grievance.

I received seven formal complaints of election-related misconduct during the 2006 Municipal Election campaign. Only three of those were filed before the election. Of those seven, I formally investigated three, upholding one and rejecting the other two. I dismissed four without sending the complaints on to the Member. Not surprisingly, election rivals or persons acting on behalf of election rivals brought most of those seven complaints. My investigations proceeded during the election campaign period but in none of the three did I report to Council until after the election. In addition to these complaints of election-related misconduct, I also received two other complaints during 2006 that had obvious election motivations. I found both these complaints to be justified, reporting on one before and one after the election.

Whether there should be any moratorium on complaints during an election year is a very difficult issue. Where a Member has engaged in election-related misconduct contrary to the *Code of Conduct*, there is an important public interest at stake in a report on that kind of misconduct before, rather than after the election. Similarly, if a Member has engaged in other kinds of misconduct in an election year, the electorate has a legitimate claim to know that before the election. Irrespective of the fact that the misconduct can still lead to

consequences after the election, there is a strong argument that Members should not get a free pass on possible exposure in the six months or any period prior to the election.

I appreciate the concerns that Members have about strategically or politically motivated complaints. However, I have consistently taken the position in my reports that political motivation does not amount to a stand-alone basis for rejecting a complaint on the basis that it is vexatious or made in bad faith. Just because the complainant may have such a stake in exposing the Member does not make any misconduct more justifiable or less deserving of timely reporting.

It is also important to realise that I do have and exercise discretion to dismiss complaints that lack substance or are frivolous. Indeed, as recorded above, I did that on a number of occasions with respect to complaints of election-related misconduct. I can also choose to do what the motion would make mandatory – postpone (or not pursue aggressively) an investigation during the period leading up to an election. I therefore do not support an embargo on the investigation or filing of *Code of Conduct* complaints for a period of six months prior to an election.

Nonetheless, there is a reality. Once the election campaign begins in earnest and once Council has its last regular meeting prior to the election in September, there is no realistic basis on which an investigation can take place and be reported on before the date of the election. In any event, Council, save in extreme cases, is not sitting and therefore not able to deal with any reports during that period. Given this reality, there is a very real risk that Members will be confronted during an election campaign with the allegation that they are the subject of a *Code of Conduct* complaint, and have no effective way of defending himself or herself or securing timely vindication. It is also the case that the Integrity Commissioner's jurisdiction over election-related conduct is limited. It is not a general authority to investigate election-related conduct on the part of incumbents but rather is confined almost entirely to allegations of improper use of office budget, City property, and office staff. When it comes to conduct in relation to City staff working on the election, the issues become particularly murky in trying to sort out conduct as a candidate and conduct as a still sitting Member.

While the situations are not exactly parallel, it is also important to realise that federal, provincial and territorial Members do not face the prospect of ethics investigations during the course of an election campaign. As opposed to the situation with Members of Council, they cease to be Members once the writ has dropped. While Members of Council continue to hold office until defeated at an election, there are good reasons for extending that same protection to them during an election period.

Ideally, the legislature should amend the *Municipal Elections Act, 1996* to clarify this and other aspects of the status of Members during an election campaign and, indeed, clearly define a later date in an election year from which candidates can file nomination papers. However, in the absence of such an initiative, it is my recommendation that Council itself take action to place a limited moratorium on the filing of *Code of Conduct* complaints against incumbents during an election campaign.

While six months and, indeed, the 90 days presently being considered in Hamilton and Vaughan is too long, I recommend that there be a moratorium on the filing of complaints against incumbents seeking re-election¹ after Labour Day until the new Council is sworn in. Labour Day is the date in an election year, which is recommended in the Councillor Expense Policy as the cut-off date after which Members cannot expense their office budgets for advertising, newsletters, flyers and events. Making Labour Day the cut-off date for filing complaints against incumbents is consistent with that and minimizes the risk of confusion.

Costs of Initial Consultation with a Lawyer when Subject to a *Code of Conduct* Complaint

At its February 2007 meeting, Council requested the Integrity Commissioner to report on a motion to the effect that Members be entitled to the cost of an initial legal consultation when a complaint of *Code of Conduct* violation is lodged against them. Council asked that this report address both the merits of the proposal and the financial implications.

On balance, I accept that this is a good idea. While I am available to explain the process including the options open to Members who are the subject of a *Code of Conduct* complaint, there are institutional limitations on what I can do as an independent officer of the City charged with investigating complaints in an unbiased manner. Particularly when serious allegations are involved, it will generally be in the interests of the Member of Council to seek legal advice immediately. Even for less serious matters, a lawyer can provide assistance in enabling the Member to understand the nature of the allegations and prepare a response. This kind of help can make the investigative process more efficient as long as early legal intervention does not lead as a matter of course to undue formalization of the process. It is also the case that, on occasion, a lawyer represents complainants. In those instances, it can assist if the Member also has a lawyer or has taken legal advice.

At present under the *Complaint Protocol*, members are entitled to recover legal costs after the event (including the fee for an initial consultation) if they are exonerated (and in a number of other situations). I can also authorize payment of legal costs during the processing of a complaint if I am of the opinion that the use of a lawyer by any of the parties would “facilitate the carrying out of the investigation” (Section 12(5), *Complaint Protocol*).

Because of this, I see no need for Members to have a further entitlement to charge legal costs directly to the City. However, in order to encourage Members to seek legal advice where it would be useful, it is my recommendation that they be able to use their Office Expense Budget for this purpose. Where they are subsequently exonerated (or in other situations approved by Council), they will be able to seek reimbursement from the City. Otherwise the expense will remain a charge against the Office Expense Budget.

¹ But not those who are not seeking re-election or members of local boards (restricted definition).

However, there should be limits: the consultation should be for a maximum of one hour and \$500. In the event that more time is needed and greater costs incurred, Members can still take advantage (where they qualify) of the existing legal costs regime contained in the Complaint Protocol and partly summarized above.

Attendance at Conferences, Seminars and Other Official Events

At present, under Article IV of the *Code of Conduct*, Members are permitted to accept expenses from other levels of government when attending meetings and events organized or sponsored by those other levels of government. This seems too narrow and, after consultation with those working on the Report on the Councillor Expense Policy and consistent with the recommendations in that Report, I am recommending that this category of permissible gift or benefit be extended to situations where the organizers of a conference, seminar or official event pay the expenses of a Member attending such an event either as a speaker or in an official capacity.

Donations to Members' Community Events

At its meeting of September 26 and 27, 2007, City Council asked that the Integrity Commissioner “*review the policy that prohibits Members of Council receiving donations to community events, consider an alternative policy, and submit a report to Executive Committee.*” Subsequently, at its meeting of December 11, 12 and 13, 2007, in response to an interim report from me, Council approved in principle amendments to Article IV of the *Code of Conduct* and the 2002 Council Policy on “Use of Corporate Logo, Donations and Sponsorships and Personal Funds by Members of Council” that would “*permit Members of Council to accept sponsorships and donations for community events that they organize and run.*” Council also asked me to provide recommendations through the Executive Committee

...as to appropriate mechanisms for implementing this change in Council policies, such mechanisms to include full disclosure of expenses paid by all participants, including photographs of all receipts and public reporting on a frequent basis, at least four (4) times per year.

Pending that report, Council approved as a permissible gift or benefit in terms of Article IV of the *Code of Conduct* (“Gifts and Benefits”), sponsorships and donations subject to reporting requirement and an overall limit of \$5000 per event.

Over the past few months, I have discussed this issue extensively with Members of Council and relevant members of the City of Toronto public service.

Donations to Members of Council for the purposes of community events are “gifts and benefits” under Article IV of the *Code of Conduct*. Without the current interim policy, they would not be included within the list of permitted gifts and benefits. Therefore, except as authorized by the interim policy, the acceptance of donations for these purposes is a violation of the *Code of Conduct*.

In many Wards, there has been a long tradition of community events run by Members. In these Wards and others, Members believe that organizing or promoting community events is part of their responsibilities. They help build a sense of community particularly in ethnically diverse Wards. They fulfill a valuable service role in less affluent neighbourhoods and especially those in which there are social problems. (For a more in-depth description of my findings and observations, see Appendix VI). Because of this, Member-run community events should be both accepted and encouraged.

One way of doing this is to permit Members to solicit and accept donations in both money and kind for community events. However, this practice does raise ethical concerns. The larger and the more numerous the events, the greater is the drain on Members' time from their other responsibilities. Members should not be in the business of providing entertainment to their constituents particularly as part of a strategy to ensure re-election. As well, solicitation of donations for community events brings with it the danger that those solicited will see a contribution as necessary for securing the good will of the Member. Conversely, donors will perceive the making of a donation as securing influence with the Member. These dangers are particularly acute when the donor is seeking to do business with or obtain some other advantage from the City. Accordingly, any policy allowing Members to solicit and accept donations for community events must strike a balance between accommodating a valuable social function and the potential dangers to Members' integrity, especially when related to election financing issues.

More particularly, the development of an appropriate policy requires identification of the competing principles and the crafting of rules that strike an appropriate balance in the light of these competing principles.

Any policy and rules respecting community events and programs obviously requires some consensus on basic principles. In my view, those basic principles are as follows:

1. Community events and programs are important aspects of the life of many Wards across the City and Members play a valuable role in the organization (including the funding) of such events. The rules and policies on donations to community events and programs should recognize that and not put inappropriate impediments on Members' involvement.
2. There is nothing necessarily wrong with Members seeking financial support from constituents and businesses to support these activities or with Members running these events (including their funding) through their offices or a third party subject in whole or in part to the Member's direction.
3. Members will often benefit politically from the running of such events and programs, and where they depend in whole or in part on funding provided by constituents and businesses, the perception can develop that Members are engaging in these activities simply to enhance their profile in their Wards and soliciting financial support as part of an ongoing re-election campaign.

4. Aside from enhancing the profile of Members in their Wards, external funding of such events can give rise to serious concerns about possible conflicts of interest and improper use of influence. Those seeking to do business with the City may believe that support for community events is part of the price of doing so. Perceptions can also easily develop that donations to community events buy influence with the Member.
5. Certain forms of financial support for community events and programs may violate Council policies such as situations where a Member secures support for a community event or program outside of the regular section 37 process as part of negotiations over planning permission, and from registered lobbyists or developers with pending applications.
6. In order to minimize the risks that attend the solicitation and acceptance of support for community events, any policy or rules should contain the following features:
 - (a) transparency irrespective of whether the event is being run directly by the Member or by a third party on the Member's behalf;
 - (b) a limit on the amount of money or value of in kind donations that a Member may solicit or accept in a calendar year;
 - (c) a prohibition on the solicitation and receipt of donations from those currently registered as lobbyists or seeking development permits;
 - (d) a total ban on solicitation of support for community events outside of and as a supplement to the negotiation of section 37 benefits under the *Planning Act*;
 - (e) a ban on solicitation for programs that are being or could be run by City programs, and which are subject to a different policy; and
 - (f) prohibiting otherwise permissible donations for community events and programs beyond a certain point in an election year.

The recommendations in this report reflect those concerns and incorporate the identified features in a policy on Council Member-Organized Community Events. They impose an annual financial limit of \$10,000 on the value of donations... They require transparency and accountability through open reporting requirements and also subject the accounts for such events to the same accounting, disclosure and auditing regime as recommended for Members' expenses in the Councillor Expense Policy. They prohibit certain kinds of solicitation and receipt of donations and, in particular, support from lobbyists or those currently involved in developments that require permits from the City. The policy also confines the raising of money and the securing of sponsorships to specific community events. It does not extend to programs. Members wishing to become involved in the

development of ongoing programs in their Wards or elsewhere must do so through the relevant City division and under the direction of that division. This is consistent with the existence of a separate Council policy in the case of donations and sponsorships for ongoing programs

Finally, as soon as a Member files his or her nomination papers (in accordance with the *Municipal Elections Act, 1996*), they are prohibited from receiving donations and staging events supported by donations and sponsorships. If this prohibition is not in place, there is a danger that a Member's integrity will be compromised because the issues concerning acceptable limits on donations and sponsorships are particularly acute during an election year.

There are serious difficulties in distinguishing between the activities of an incumbent as a Member and those carried on as a candidate, particularly once a Member has filed nomination papers for the election. Aside from the ethical problems that can arise out of a situation where a Member continues to stage events during an election year with the support of donations and sponsorships, the Member also runs the potential risk of having to face allegations of exceeding campaign finance limits and engaging in inappropriate behaviour as part of the Compliance Audit process under the *Municipal Elections Act, 1996*. The possibility exists that Members could be subject to expensive and protracted legal battles over the difference between a donation to a community event and a donation to an election campaign.

Clearly, the *Municipal Elections Act, 1996* needs extensive revisions to deal with these and other issues. City Council has already requested substantial legislative amendments to the current statute, and, in particular, revisions to define more clearly campaign financing rules with respect to a Member's respective roles as candidate and incumbent, and to review the entire Compliance Audit process.

Members of municipal councils are particularly vulnerable to attacks on their integrity because no clear boundaries currently exist to define the role of the incumbent and that of a candidate. As noted already, in federal and provincial election campaigns, as soon as the writ is dropped, the incumbent ceases to perform their respective duties and takes on the role of candidate full-time. Such a distinction does not exist at the municipal level. This can lead to the perception that community events, sponsorships and donations are part of a candidate's re-election campaign, potentially placing Members in a difficult position.

Until the province amends the existing *Municipal Elections Act, 1996* to clarify the roles of incumbents and candidates, the ethical concerns and the self-interest of incumbents coalesce to make it clear that there should be restrictions on donations and sponsorships for community events during an election year. This report recommends a total ban from the date on which a Member files nomination papers. This would clearly alleviate any ethical concerns and protect the interests and integrity of the Member.

Schedule to *Code of Conduct*

The original 1999 *Code of Conduct* included a Schedule outlining the Roles and Responsibilities of the Council, Members and Staff. The Schedule also had two appendices in the form of reports from the former Administration Committee that Council had adopted: Summary of Each Act Governing the Conduct of Municipal Members of Council and Descriptive Categories of Conduct Across Acts.

This Schedule is no longer current, primarily because of Council's new governance model and the enactment of *COTA*. In addition, my experience is that members of the public in particular often believe that it forms part of the substantive provisions of the *Code of Conduct* and extends the jurisdiction of the Integrity Commissioner. It does not, and its inclusion creates unnecessary confusion, particularly in the context of matters over which the Integrity Commissioner has no direct jurisdiction (such as *Criminal Code* offences and *Municipal Conflict of Interest Act* complaints) and more general statements about the role of Members.

For these reasons, I recommend that Council remove it from the *Code of Conduct*. Instead, the information should be updated and distributed to all Members of Council and their staff and included in the City Clerk's Handbook for Council Members. It should also be readily available to City staff and members of the public and appear on the Integrity Commissioner's website.

CONTACT

David Mullan, Integrity Commissioner
Phone: 416-397-7770; Fax: 416-392-3840
Email: dmullan@toronto.ca

SIGNATURE

David Mullan, Integrity Commissioner

ATTACHMENTS

Appendix I: Code of Conduct for Members of Local Boards (Restricted Definition)

Appendix II: Code of Conduct for Members of Adjudicative Boards

Appendix III: Code of Conduct for Members of Council

Appendix IV: Code of Conduct Complaint Protocol for Local Boards (Restricted Definition) including Adjudicative Boards

Appendix V: Code of Conduct Complaint Protocol for Members of Council

Appendix VI: Donations to Councillor-Run Community Events and Programs