



**INTEGRITY
COMMISSIONER REPORT
ACTION REQUIRED**

**Report on Amending the Complaint Protocol about
Election Year Complaints in Response to Changes to
the *Municipal Elections Act 1996***

Date:	January 18, 2010
To:	Executive Committee
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

The current *Code of Conduct Complaint Protocol for Members of Council*, (“*the Complaint Protocol*”) does not permit formal complaints to be made to the Integrity Commissioner between Labour Day of an election year and the date that the new City Council is organized.

On December 15, 2009, the Province passed Bill 212, Good Government Act, which amended the Municipal Elections Act 2006 and moved Election Day up to October 25, 2010. In anticipation of the passage of this Bill, City Council changed the Committee and Council meeting schedule for Fall 2010. The last regular City Council meeting before Election Day will now be held in August, instead of at the end of September as formerly planned.

In keeping with the new dates, this report recommends amending the *Complaint Protocol* and changing the date in an election year after which no formal complaints can be made from Labour Day to Civic Monday (August 1 in 2010).

RECOMMENDATION

The Integrity Commissioner recommends that Council:

1. Amend the *Code of Conduct Complaint Protocol for Members of Council*, Part B: FORMAL COMPLAINT PROCEDURE, section 1(6) as follows:

In a municipal election year, a code of conduct complaint respecting a member who is seeking re-election may not be filed with the City Clerk during the period starting on Civic Monday (August 1 in 2010) and ending when a new City Council is deemed organized under section 185 of the *City of Toronto Act 2006*.

Financial Impact

This report will have no financial impact.

DECISION HISTORY

At its meeting on July 15 & 16, 2008, City Council adopted a report from the Integrity Commissioner EX22.6 titled "Report on Issues Arising Out of Operation of Members' Code of Conduct and Complaint Protocol." The report recommended addressing issues which arose during an election year. City Council approved 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.

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-13844.pdf>

At its meeting on December 2, 2009, City Council approved EX37.5 Adjustments to the 2010 Fall Schedule of Meetings Due to Revised Municipal Election Dates (Ward: All) and changed the 2010 schedule of meetings in response to the amendments to the *Municipal Elections Act, 2006*.

<http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-25319.pdf>

Attachment 1 - Adjusted 2010 Fall Meeting Schedule

<http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-25320.pdf>

The schedule of meetings in the coming election year means that the last meeting before Election Day will be held in August rather than in September of 2010.

ISSUE BACKGROUND

The Integrity Commissioner recommended in 2008 that the *Complaint Protocol* provide for a moratorium on formal complaints between Labour Day in an election year, and the date on which the new City Council is organized. These dates were chosen because once an election campaign begins and the last regular meeting is held there is no realistic way to deal with complaints until after the election. The former Integrity Commissioner noted in his report of June 16, 2008, "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."

On October 27, 2009, the Province introduced Bill 212, the Good Government Act, which proposed amendments to the *Municipal Elections Act 2006*, including changing the

municipal election date to the fourth Monday of October, beginning with October 25, 2010. Bill 212 received third reading on December 3, 2009 and Royal Assent on December 15, 2009.

On December 2, 2009, City Council revised the Council meeting schedule for Fall 2010 and moved the last Council meeting to August 25 and 26, 2010, in anticipation of the passage of Bill 212.

If the date of the moratorium is not revised to meet the new schedule, complaints could be made in the period between August 16 (the deadline for submitting reports to Council) and Labour Day, without any realistic mechanism for reporting out to City Council prior to the election. Accordingly, I recommend that the date in the *Complaint Protocol* be shifted to Civic Day, which in 2010 would be August 1.

COMMENTS

The policy behind a moratorium on complaints during the immediate run-up to an election and adopted by Council in July 2008, is found in the report of the Integrity Commissioner to Executive Committee dated June 16, 2008. A copy of the relevant portion of that Report is attached as Appendix 1.

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SIGNATURE

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Attachment - Appendix 1: Integrity Commissioner Report for Action on Members' *Code of Conduct and Complaint Protocol*, June 16, 2008 (Excerpt only: "Complaints During an Election Year").

APPENDIX I

Integrity Commissioner Report for Action on Members' *Code of Conduct and Complaint Protocol*, June 16, 2008 (Excerpt only: "Complaints During an Election Year")

Background Information (City Council)

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-election, 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.

<http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-13844.pdf>