



**INTEGRITY
COMMISSIONER REPORT
INFORMATION ONLY**

Integrity Commissioner Annual Report–2011

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|--------------------------|------------------------|
| Date: | June 30, 2011 |
| To: | City Council |
| From: | Integrity Commissioner |
| Wards: | All |
| Reference Number: | |

SUMMARY

The Integrity Commissioner reports annually to Council on the work of the office. This Report covers the work of the Office of the Integrity Commissioner from July 1, 2010 to June 30, 2011.

RECOMMENDATIONS

The Integrity Commissioner recommends that City Council:

- 1) 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”) requires the Integrity Commissioner to make “periodic reports to Council.” Section 3.7 of the *Toronto Municipal Code* requires that an Accountability Officer (including the Integrity Commissioner) report annually to Council on the activities of his/her office and the discharge of his/her duties.

COMMENTS

Introduction

This year marked the transition from the 2006-2010 term of Council through a municipal election and the first year of the 2010-2014 term of Council. The work of the Office of the Integrity Commissioner continued through this period, although complaint resolution was placed on hold during the election period as directed by Council.

ACTIVITIES OF THE INTEGRITY COMMISSIONER: JULY 1, 2010- JUNE 30, 2011

A. Policy Development and Advice

The Integrity Commissioner responded to a number of requests for policy advice as follows:

Accountability Framework Policy Work

In 2010, work began on a budget protocol for the four Accountability Officers in consultation with the City Manager's Office in accordance with the Accountability Framework and the *City of Toronto Act, 2006*. On August 13, 2010 a budget protocol was finalized to balance the independence of these offices with fiscal transparency and integration with the City budget processes. The new budget protocol was followed during the 2011 budget process.

Code of Conduct Policy Consultation: Human Rights and Harassment Complaints

In 2011, consultations were conducted with the Human Rights Office, City of Toronto and with the City Solicitor in response to a prior audit recommendation which provided that:

The City Manager, in consultation with the City Solicitor, review the existing complaint protocol of the Integrity Commissioner in order to ensure that Councillor related human rights and harassment complaints are dealt with in a manner consistent with other complaints and is in the best interest of the public.

As a result of these consultations, I do not recommend any change to Article XIV (Discreditable Conduct) of the *Code of Conduct for Members of Council* (the "*Code of Conduct*") or the *Code of Conduct Complaint Protocol for Members of Council* (the "*Complaint Protocol*"). Article XIV prohibits discreditable conduct on the part of members of Council and requires compliance with the *Human Rights and Anti-Harassment Policy* and the *Hate Activity Policy*. In cases where a complainant wishes to pursue a remedy which is not available under the *Code of Conduct*, for example, compensation, this can be accomplished by way of a referral to the Ontario Human Rights Tribunal. In other cases, the sanctions available to Council under the *Code of Conduct* and *Complaint Protocol* may be more appropriate. In addition, by continuing to require Councillors to meet the expectations for conduct under Article XIV, Council demonstrates to the public its commitment to setting a collective standard of respect and equitable treatment.

Councillor Expense Policy

A review of the Councillor Expense Policy began in 2010 – 2011. The *Code of Conduct* requires that members abide by policies established by Council, including the Councillor Expense Policy. I met with City staff to comment on the draft portions which relate to the operation of the *Code of Conduct* and to ensure that the new provisions were aligned with the *Code of Conduct*. These consultations are continuing. The revised policy is expected to be considered by Council in the coming months.

Toronto Public Service Ethics Champions

The Toronto Public Service has created “Ethics Champions” to oversee ethics initiatives, including educating staff on how to address ethical dilemmas in the workplace and create a “values-based organization.” I was briefed on their work in a meeting with Gary Wright, City Planning, on February 4, 2011.

On June 22, 2011, I met with the Ethics Champions from each Cluster to discuss the role of the Integrity Commissioner and ways in which this office might contribute to the work of staff in growing and fostering ethical behaviour at the City of Toronto. The cross-over points between the work of the Toronto Public Service and this office can strengthen the City's commitment to its core values and allow us to learn from each other in carrying out the parallel roles of ethics advisors and educators.

B. The 2010 Toronto City Election

As a result of the 2010 election, a moratorium on complaints began on August 2, 2010. During the election period, I encouraged citizens with complaints to raise them directly with their Councillors if they preferred not to wait until after the election. This gave complainants an option for taking immediate steps, particularly if the matter was time-sensitive, or if the Councillor in question was not running for re-election.

My office received a number of questions about matters that fall under the *Municipal Elections Act* (“MEA”). In these cases, I provided follow up and referral information. A number of complaints were received about conduct that would not constitute a breach of the *Code of Conduct* but given the election, caused citizens to inquire about Council policy. These included Councillor newsletter delivery in an election year and uses of the Councillor Expense Policy. Overall, there were 165 queries received during the election moratorium period. There was not an observable spike in demand for formal complaints during the moratorium period. This may be a result of the rather limited jurisdiction of this office over matters relating to the election. In two cases, complainants waited until the moratorium had passed and then filed formal complaints.

C. Advice

Members of Council continued to look to the Office of the Integrity Commissioner for advice on a range of topics. The most common areas of request were gifts and benefits, use of influence and questions around conflict of interest. Councillors and their staff received telephone, e mail and in-person advice, depending on the nature of the inquiry. As in prior years, the number of advice requests have increased over the past year.

Members of Council - Advice Sought and Provided

| | <u>2009-2010</u> | <u>2010-2011</u> |
|------------------------------------|-------------------------|-------------------------|
| Members of Council Seeking Advice: | 39 | 36 |
| <hr/> | | |
| Informal Advice: | 76 | 88 |
| Formal Written Advice: | 53 | 96 |
| Total: | 129 | 184 |

The public has also made use of this office in greater numbers, as demonstrated below.

Citizen and Staff Inquiries

| | <u>2009-2010</u> | <u>2010-2011</u> |
|---------------|-------------------------|-------------------------|
| Citizen: | 219 | 283 |
| Staff: | 44 | 82 |
| Total: | 263 | 365 |

In addition to receiving direct requests for advice and information, the Integrity Commissioner's website (<http://www.toronto.ca/integrity/index.htm>) continues to be consulted. A number of callers have said that they find the website helpful and easy to navigate.

Website Tracking: Office of the Integrity Commissioner - Number of Visits

| <u>2009 – 2010</u> | <u>2010 – 2011</u> |
|---------------------------|---------------------------|
| 27, 811 | 36,876 |

Sample Advice Responses

As in other years, samples of advice are summarized and included below to provide further information as to how the *Code of Conduct* is being applied and interpreted.

Gifts and Benefits:

A member of Council requested advice on what to do about multiple offers of tickets to events and dinners. The advice provided was to assess each offer individually against Article IV (Gifts and Benefits) of the *Code of Conduct*, including the source of the offer, the nature of the offer and its value. As an example of a clear limit, tickets cannot be accepted from a lobbyist or a client of a lobbyist. Whenever in doubt, check with the Integrity Commissioner about the application of the *Code of Conduct*.

Conflict of Interest:

A Councillor sought advice on what steps should be taken where a member of the Councillor's staff had been seconded from another City organization. Advice was provided to create office protocols to avoid any appearance of conflict with the employee's former employment and current responsibilities with the City and to ensure confidentiality.

Use of City Resources:

A Councillor sought advice on whether it would be appropriate to thank constituents for electing him/her in the Councillor's newsletter. The Councillor was advised that it would be better not to use a city funded publication to thank voters but instead to focus on the work of the office on behalf of citizens. This would honour the spirit of both Article VII (Election Campaign Work) and Article VI (Use of City Property, Services and Other Resources).

Councillor Expense Policy:

A member of Council requested advice after an expenditure properly made by the Councillor under the Councillor Expense Policy was criticized. The advice given is that members of Council are held accountable in more than one way. A use of taxpayer money may be permissible and not amount to an ethical breach, yet it may still attract public or political controversy. Expenditures will need to be consistent with the public interest and if they are made in accordance with the spirit and the letter of the policies, expenditures may be more acceptable. This office is available to provide advice on questions of policy or on the intentions behind the "rules" with a view to acting as a guide to decision-making in the public interest.

Complaints & Investigations

The *Complaint Protocol* provides for the procedures to follow in the case of informal or formal complaints. The *Complaint Protocol* is available on line at:

<http://www.toronto.ca/integrity/pdf/complaint-protocol.pdf>.

Due to the election moratorium on complaints, the complaint period was shortened to 8 months in 2010 - 2011. The number of all complaints received during this reporting period is set out below and compared to the volume of complaints for last year. There have been fewer "formal" complaints (that is, those brought by way of sworn affidavit) and an increase in informal complaints, which are resolved by letter, discussion or meetings without engaging the formal process or requiring a report to Council.

Complaints Received

| | <u>2009-2010</u> | <u>2010-2011</u> |
|-----------------------------------|------------------|------------------|
| Formal Complaints Received: | 13 | 9 |
| Informal Complaints Received: | 2 | 16 |
| Total Complaints Received: | 15 | 25 |

The breakdown on the disposition and source of the complaints received during the last reporting period is outlined below:

Disposition of Formal Complaints: July 1 to June 30

| | <u>2009-2010</u> | <u>2010-2011</u> |
|--|------------------|------------------|
| Rejected as Beyond Jurisdiction | 3 | 0 |
| Dismissed on the Merits | 2 | 6 |
| Sustained and Reported to Council | 1 | 0 |
| Settled, Withdrawn or Abandoned | 0 | 0 |
| Rejected as Frivolous or Vexatious | 0 | 0 |
| Made in Bad Faith or Without Substance | 5 | 0 |
| Still Under Investigation/Deferred | 2 | 3 |
| Total: | 13 | 9 |

Formal Complaints by Source, - July 1, 2010 to June 30, 2011

| | |
|------------------------|----------|
| Complaints by Staff: | 0 |
| Complaints by Public: | 8 |
| Complaints by Members: | 1 |
| References by Council: | 0 |
| Total: | 9 |

Formal Complaints by Office – July 1, 2010 – June 30, 2011

Complaints About:

| | |
|-----------------------------------|----------|
| Members of Council and Mayor | 7 |
| Members of Local Boards | 1 |
| Members of Adjudicative Boards | 1 |
| Total Complaints Received: | 9 |

During this reporting period, I completed one investigation which resulted in a report to Council on the *Code of Conduct*. The “Report on Code of Conduct Violation” was adopted by Council at its meeting of August 25 and 26, 2010. A copy of this report is available on the Integrity Commissioner’s website at: <http://www.toronto.ca/legdocs/mmis/2010/cc/bgrd/CC52.1.pdf>

Council's decision required the Councillor to reimburse lobbyists and corporate donors from whom he had improperly solicited and taken donations. A copy of the decision was provided to the Councillor and follow-up letters were sent on August 31, 2010, September 15, 2010, May 10, 2011, June 7, 2011 and July 4, 2011. Confirmation of compliance remains outstanding. A copy of Council's decision is attached as Appendix I.

Dismissed Complaints

Below are summaries of some of the dismissed complaints in 2010-2011. The names and identifying details of the complaints have been removed to protect confidentiality.

1. A member of the public complained about the outcome of a community consultation in which the Councillor had supported the renaming of a City facility. The decision had been made with City staff involvement and was brought before Community Council for decision. The complaint was dismissed because there were insufficient grounds of a violation of the *Code of Conduct* to support an investigation.
2. A constituent filed a formal complaint that a Councillor had interfered with staff decision-making over a building permit issue and had been guilty of discreditable conduct in dealings with the constituent. The matter was dismissed after an investigation. The Councillor was found to have acted appropriately in asking questions and looking into complaints from other constituents. There was no evidence of pressure on staff to make any decisions or discreditable conduct contrary to the *Code of Conduct*. Accordingly, there was no improper use of influence or discreditable conduct contrary to the *Code of Conduct*.
3. A member of the public complained about a member of Council because of actions taken by a member of the office staff. The material filed in support of the complaint contained an explanation which made it clear that the member had not directed staff to take the

criticized actions. When the complainant made the concerns known to the member's office, the actions were rectified on the same day. As a result, no investigation was commenced based on lack of sufficient grounds to conclude that the member had breached the *Code of Conduct*.

4. A member of the public complained that a member of Council had provided confidential information to an employer and had caused the complainant to be dismissed by the employer. The information provided in support of the complaint contained no reasonable or objective basis on which to proceed to an investigation. A subjective belief, without some objective support for that belief was found to be insufficient grounds for proceeding to an investigation.

Deferred Complaints

In 2011, a formal complaint was received in relation to a member of an adjudicative tribunal. This complaint was deferred pending the disposition of outstanding parallel proceedings. The parties have been advised of the decision for the deferral and Council will receive a report, if and when appropriate, on the disposition of the matter.

D. Gifts and Benefits Reporting

The Integrity Commissioner's office received two Donor Declaration Forms for Council Member-Organized Community Events from the office of the City Clerk in this reporting period. These forms are required to be filed with the Office of the Clerk for donations to community events and cover sponsorships and donations whether in cash or in kind. This form is used to ensure that donations are kept within the allowable annual limit of \$10,000 to ensure that donations received are for expenses for specific events and that the Gifts and Benefits provision in the *Code of Conduct* is being followed by Councillors. When the donation does not fall within the exceptions provided by the *Code of Conduct*, the member is advised so that the donation can be reimbursed.

E. Education & Outreach

The mandate of this office includes education. In this reporting period, I attended meetings, made presentations and issued bulletins on the work of the office as follows:

- Presentation to the Solicitor's Meeting, Office of the City Solicitor, September 28, 2010: "The Role of the Integrity Commissioner at the City of Toronto"
- Integrity Commissioners of Ontario: The City of Toronto Integrity Commissioner hosted the third in-person meeting of Integrity Commissioners from across Ontario on October 29, 2010
- Joint Presentation of the Accountability Officers to Members-Elect, November 23, 2010: "Ethics at the City of Toronto: Starting Your New Term from a Position of Strength"

- Presentation to the Brampton Board of Trade, “The Role of an Integrity Commissioner in Municipal Government” December 2, 2010
- Presentation to the Introductory LL.M. course in Municipal Law, Osgoode Hall Law School, “Codes of Conduct and the Role of a Municipal Integrity Commissioner” on April 1, 2011
- Issued a Joint Interpretation Bulletin with the Lobbyist Registrar: "Lobbying During Procurements" released April 20, 2011
- Integrity Commissioners of Ontario: Attended the fourth in-person meeting of this group at the City of Vaughan on April 21, 2011
- Completed and distributed an annotated version of the *Code of Conduct for Members of Council*, incorporating previous findings, advice and policies by subject area, to create an “at-a-glance” version for the use of the Council and the public on April 27, 2011
- Joint Session with the City Solicitor for Councillors and Staff of Council Members on the Code of Conduct on May 6, 2011: "Skillful Communications and Making Effective Referrals"
- Discussion Group Leader, Transparency International Day of Dialogue, Toronto, Ontario on May 12, 2011: "Perceptions of Corruption in Provincial Government"
- Presentation to LL.M. course in Municipal Law, Osgoode Hall Law School – New Administrative Law: "Roles of Accountability Officials" on May 27, 2011
- Presentation to Ethics Champions, City of Toronto: "Building a Culture of Integrity" on June 22, 2011
- Issued a Joint Interpretation Bulletin with the Lobbyist Registrar: "Lobbying and Donations to Council-Member Organized Community Events" on June 30, 2011

F. Budget

The 2011 approved budget for the Integrity Commissioner's office is \$202.3 thousand. This represents a decrease of \$1.6 thousand from 2010 and includes a budget reduction of \$8.5 thousand by reducing the non-payroll budget by 33%. After taking into account in-year adjustments relating to 2.25% COLA increase for non-union staff, an increase in contribution to the insurance reserve and the transfer of the telephone budget to I&T Division, the Integrity Commissioner's 2011 approved adjusted budget is \$202.0 thousand.

The expenses of the office during the past reporting period are detailed in Appendix 2, attached to this report.

G. Future Directions

In last year's Annual Report, I identified three goals for 2010-2011. The first was member information and education. In support of this goal and at Council's request, I created an annotated version of the *Code of Conduct* which contains all prior decisions, advice and policies organized under the relevant sections of the *Code of Conduct*. This version was distributed to all Councillors and a copy was placed on the website. Lunch and Learn programs for Councillors and Councillors' Staff began May 6, 2011, with future sessions planned in July and in the fall on a variety of topics organized around sections of the *Code of Conduct* and related policies.

The second goal was to support the new Council transition and to provide briefings to new members of Council. A joint program was created involving all four Accountability Officers and provided to new members on November 23, 2010. I also provided one-on-one-briefings to Councillors on request.

The third area, which is an ongoing goal of the office, is to consider ways to support the growth of an ethical culture among elected and appointed officials. The City of Toronto is a leader in having been the first municipality in Canada to have an integrity commissioner. As of 2011, there are seventeen other municipalities in Ontario that have appointed or established an integrity commissioner. Toronto is often consulted for information and guidance in this realm and I commend Council for its ongoing support of the office and willingness to work within a public accountability framework.

The Toronto Public Service is similarly showing leadership in its efforts through its "Ethics Champions" who are concerning themselves with the education of managers and staff to nurture the values that are expected from the public service. There are many opportunities for the political and non-political parts of the City of Toronto to support the ongoing growth of ethical practices to demonstrate the values which Council expects across the organization. I will continue to meet with the Ethics Champions in order to effectively interface on matters of shared interest.

In the year ahead, I plan to work with Council to respond to two issues which have emerged in the past number of months. The Speaker has identified decorum in Council as an ongoing issue. It has also been a matter of comment by the former Integrity Commissioner, David Mullan and by the interim Integrity Commissioner, Lorne Sossin. In addition, concerns about the use of social media during *in camera* sessions of Council have been raised. Accordingly, as part of the policy function of the office, I will meet with Councillors to discuss how Toronto can show leadership in the arena of public debate on the question of any amendments to the *Code of Conduct* or whether Council procedures are necessary to address the use of social media at Council.

Conclusion

The work of the office responded to the needs of Council over the past year, by assisting with election year queries, planning for new Council transition and providing briefings on request. The moratorium period during the election meant that formal and informal complaints were put

on hold, and resumed after the first meeting of Council was organized. In addition, the office moved from its temporary location on the second floor of City Hall to space at 375 University Avenue, Suite 202, in proximity to the Office of the Lobbyist-Registrar and the Ombudsman. This move was handled smoothly and efficiently by the Office of the City Clerk and by Facilities.

The administrative needs for the office have been ably supported by the City Clerk's office and by the part time support provided by Lauren Hollywood (September 2010 to January 2011) and by Wendy Wilson (January 2011 to date). I am grateful to both Ms. Hollywood and Ms. Wilson for their excellent work.

This is my second annual report to Council since becoming Integrity Commissioner in September of 2009. I look forward to serving Toronto City Council and the City of Toronto in the year ahead.

CONTACT

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SIGNATURE

Janet Leiper, Integrity Commissioner

ATTACHMENTS

Appendix 1: Council's Decision – CC52.1 – Report on Violation of Code of Conduct
August 25, 26, 27, 2010

Appendix 2: 2010-2011 Integrity Commissioner's Office Budget and Expenditures