



**INTEGRITY  
COMMISSIONER REPORT  
ACTION REQUIRED**

**Report on Violation of Code of Conduct for Members of  
Council: Councillor Mike Layton**

<b>Date:</b>	July 8, 2013
<b>To:</b>	City Council
<b>From:</b>	Integrity Commissioner
<b>Wards:</b>	All
<b>Reference Number:</b>	

**SUMMARY**

---

On April 8, 2013, a member of the public filed a formal complaint with the Office of the Integrity Commissioner alleging that Councillor Mike Layton had violated Article XII (Conduct Respecting Staff) of the *Code of Conduct for Members of Council* ("*Code of Conduct*") as a result of public comments made by Councillor Layton to a variety of media outlets about the City Manager's Report entitled *New Casino and Development in Toronto* ("The Casino Report")

This Report recommends to Council a finding that Councillor Layton breached Article XII of the *Code of Conduct*. An apology was made to the City Manager, who was completely satisfied with that outcome. For the reasons set out below, no further action is recommended to City Council.

**RECOMMENDATIONS**

The Integrity Commissioner recommends that:

1. Council adopt a finding that Councillor Layton breached Article XII of the *Code of Conduct*.
2. Council adopt a finding that no further action be taken because Councillor Layton has apologized to the City Manager.

## **Financial Impact**

This report will have no financial impact on the City of Toronto.

## **DECISION HISTORY**

On April 8, 2013, a member of the public filed a complaint with the Office of the Integrity Commissioner pursuant to the *Code of Conduct Complaint Protocol for Members of Council* (the “*Complaint Protocol*”) and section 160 of the *City of Toronto Act, 2006*.

An investigation was conducted into the complaint. This report on that complaint is brought in accordance with the *Complaint Protocol* and section 162(3) of the *City of Toronto Act, 2006*.

## **ISSUE BACKGROUND**

### **Investigation**

The formal complaint alleged that on April 8, 2013, The Casino Report was released. Councillor Layton made a number of comments about the report to the media and on social media including:

*The fact is this is a fictional report that doesn't have any real substantive numbers in it.*

**[To 680 News]**

*We've had eight months of debate and what we got was a report with fictitious numbers.*

**[To Newstalk 1010]**

*The entire bases for the casino report assumes TO council can impose conditions on provincial gov and OLG. Experience says otherwise.*

**[on Twitter]**

*This is a fictional report that doesn't contain any real numbers.*

**[To Desmond Cole, Freelance Journalist]**

*[The report was] fictitious.*

**[To NOW reporter]**

The complaint attached links to these comments and to others made by Councillor Layton about the report. A copy of the complaint was provided to Councillor Layton who responded by letter dated April 24, 2013.

In his reply, Councillor Layton did not dispute that he had made the comments, but asserted that he stood by his comments because they were not intended to injure the reputation of any member of City staff and he did not believe that his comments had injured the reputation of any member of City staff. Councillor Layton stated in his letter (which was co-signed by Councillor Vaughan, who was subject to a parallel complaint for his comments) that:

...it is the role of a City Councillor to evaluate the policies and the programs of the city. This of course includes evaluating the policies put forward within reports presented to us.

Councillor Layton wrote that there is a clear distinction between criticism and malicious attempts to injure the professional and ethical reputation of City staff. He noted that he had not named any particular member of staff. Accordingly, he argued that the comments did not breach Article XII of the *Code of Conduct*.

A copy of the response was provided to the complainant, who wrote in reply that the role of a City Councillor to evaluate policies and programs of the City does not give a City Councillor "carte blanche" to maliciously or falsely injure the professional or ethical reputation of staff which is protected under Article XII of the *Code of Conduct*. The complainant said that although no staff member was named by Councillor Layton, the report was authored, signed and presented by the City Manager.

The complainant also pointed out that as a Certified General Accountant, the City Manager is subject to the ethical principles of his governing body which requires members to act with "trustworthiness, integrity and objectivity" and to "not be associated with any information which the member knows, or ought to know, to be false or misleading, whether by statement or omission." The complainant wrote that the comments made by Councillor Layton, in particular the use of phrases such as " *The fact is this is a fictional report that doesn't have any real substantive numbers in it*" and "...*what we got was a report with fictitious numbers*" amounted to an allegation that the City Manager had breached his own ethical principles and that the remarks failed to show respect for the professional capacities of staff.

The investigative steps taken were as follows:

- Review of affidavit and material filed in support;
- Review of press clippings associated with the comments for context;
- Meeting with City Manager;
- Review of the *New Casino and Convention Development in Toronto* report;
- Follow up by telephone and email with the complainant;

- Meeting with Councillor Layton, Councillor Vaughan, and City Manager;
- Follow-up correspondence to Councillor Layton concerning complainant request for a public apology.

The City Manager was interviewed about the impact of the comments and to receive his views on the matter. He was not involved in the laying of the complaint and had not been approached by the complainant in advance of the complaint. Nevertheless, the City Manager agreed that he would like to receive an apology for the remarks which characterized his report in terms such as "fictitious numbers." He said that the repeated characterizations of his report as "fictitious" caused others to call into question his motives and his reputation.

## **FINDINGS**

### **The Casino Report**

The Casino Report was released on April 8, 2013. It was created after a request was made to the City Manager in 2012 by City Council to conduct a public consultation, provide further analysis and report back with recommendations.

City staff, under the direction of the City Manager, analyzed specific locations, and looked at economic, city building, social, health and fiscal criteria. The Casino Report was divided into three parts: the first was a staff analysis and possible approach for expanded gaming in the City of Toronto; the second, the results of the public consultations, meetings and polls; the third section contained staff recommendations and discussion on implementation.

The report included estimates of matters such as market demand, necessary gaming space to support City revenue conditions which the report recommended include not less than hosting fees of \$100 million. The estimates and assumptions on which these figures were based are described in the report. The review of economic and employment issues included consultations with other North American cities. The hosting fee projections were based on the City's hosting fee request to the province and on information from OLG data for other casinos.

The report similarly discussed provincial indications that there would be a standard funding formula across the province for all municipalities. The report noted that a Toronto casino as part of a larger integrated entertainment complex (IEC) should be treated as a unique opportunity due to its potential to generate revenue, including by way of sales and income taxes to other orders of government.

The report recommended 47 different conditions be met as part of any decision by Council to approve a casino in downtown Toronto. These conditions involved financial requirements, to transportation, design and social considerations.

The results of the public consultation were also part of this report. These included the results from a survey of 902 Torontonians, as well as a 17,780 public feedback forms obtained via the public consultation process. These figures were set out in tables as part of the report and revealed that there was public opposition to a casino ranging from 50% (poll result) to 73% (public consultation forms). The detailed reports from these consultations and the poll were attached to the report.

The options presented by the City Manager for a casino in downtown Toronto were either to provide consent subject to the conditions described in the report, or to decline consent to establish a new casino in downtown Toronto. Other recommendations were made in relation to the expansion of the Woodbine gaming facility.

### **The Public Comments**

Councillor Layton commented to multiple media outlets about the report. One news outlet described his response to the report as follows:

But Coun[cillor] Mike Layton said the city manager's report does not paint a true picture. "The fact is this is a fictional report that doesn't have any real substantive numbers in it."

In a report from Newstalk 1010, Councillor Layton was quoted as follows, "We've had eight months of debate and what we got was a report with fictitious numbers, Layton told reporters after the meeting." [The report] says we could make all this money if the stars were aligned." Councillor Layton repeated the characterization of the report as "fictional" to a freelance journalist and as "fictitious" to a reporter with NOW.

### **The Application of the *Code of Conduct***

The applicable portions of Article XII (Conduct Respecting Staff) of the *Code of Conduct* reads:

#### **XII. CONDUCT RESPECTING STAFF**

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

Under the direction of the City Manager, staff serve the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

Article XII in its entirety is appended as Attachment 1. This part of the Code of Conduct addresses the relationships between elected members of Council and members of the public service. It requires attention to the boundaries between staff roles and roles of elected politicians. It functions as a protection for staff members who are expected to provide their best advice to City Council, while remaining objective and apolitical in carrying out their functions. It also functions to remind members of Council that they can better serve the public by observing the boundaries and differing roles as between the public service and elected officials.

In this case, the public engagement around casino development was high. The issue drew significant media interest. Councillor Layton, as a downtown Councillor took a position on the casino proposal and he had every right to speak out on his views. He was entitled, as he put it in his joint letter of response to this complaint, to "evaluate policies put forward within reports presented to [City Council]."

However, in expressing his opposition to the idea of a downtown casino, Councillor Layton used language with more than one media outlet that could fairly be described as injurious to the professional reputation of staff. The repeated description of the City Manager's report as "fictitious" suggests that the report was made up, that there was nothing of value in it and that it had no basis for any of its conclusions. This was neither accurate nor fair. The City Manager's report stated its assumptions, invited Council to form its own views and provided options and conditions. I find that the repetition of this idea, across a variety of media derided the entire report and that in doing so, Councillor Layton showed disrespect for the professional capacity of staff. This is a breach of Article XII of the *Code of Conduct*.

## **Resolution**

A meeting was arranged among Councillor Layton, Councillor Vaughan, and the City Manager, with the complainant being advised but not present. During the meeting, the City Manager expressed to both Councillors the impact of these words and the understanding that although not intended maliciously, that there had been a negative impact as a result of the repetition of the words used to

characterize the report. It was an open and candid discussion which led to apologies being extended to the City Manager and an acknowledgement of the factual points of disagreement. The City Manager was fully satisfied with this outcome and this was communicated to the complainant.

The complainant requested one further action by Councillor Layton: that is to put his apology to the City Manager in writing with a copy to the other members of Council. The rationale for this request was that because the criticisms had been done publicly, that the corrective action should similarly be made public. The complainant made it clear that this was not being requested by the City Manager. Councillor Layton offered to rise in Council on a point of privilege to address the matter. Ultimately, it is for Council to decide on whether the matter has been satisfactorily resolved.

My recommendation in this report is that Council order no further actions or any sanction. My reasons for this recommendation are threefold. First, the apology extended by Councillor Layton to the City Manager was accepted and no further action was requested by the City Manager who was the person affected by the conduct. Second, this report is being made in public under City Council's *Complaint Protocol*. Therefore although the words of apology have not been made public, the fact of the apology is public and that affords a public recognition of the wrong done to the City Manager. Finally, I find that Councillor Layton was not motivated by malice or ill will towards the City Manager; rather, he failed to choose his words with care and did not think about the impact of his words on the City Manager.

## **Conclusion**

In all of the circumstances, I recommend that City Council take no further action.

## **CONTACT**

Janet Leiper, Integrity Commissioner  
Phone: 416-397-7770; Fax: 416-696-3615  
Email: [jleiper@toronto.ca](mailto:jleiper@toronto.ca)

## **SIGNATURE**

---

Janet Leiper  
Integrity Commissioner  
JL/ww

**ATTACHMENT:**

Article XII (Conduct Respecting Staff) – *Code of Conduct for Members of Council*



**Attachment 1: Article XII (Conduct Respecting Staff) - Code of Conduct for Members of Council**

**XII. CONDUCT RESPECTING STAFF**

Only Council as a whole has the authority to approve budget, policy, Committee processes and other such matters. Accordingly, members shall direct requests outside of Council-approved budget, process or policy, to the appropriate Standing Committee.

Under the direction of the City Manager, staff serve the Council as a whole, and the combined interests of all members as evidenced through the decisions of Council. Members shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Accordingly, no member shall maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff, and all members shall show respect for the professional capacities of staff.

No member shall compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities. Nor shall any member use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering with that person's duties, including the duty to disclose improper activity.

In practical terms, there are distinct and specialized roles carried out by Council as a whole and by Councillors when performing their other roles. The key requirements of these roles include dealing with constituents and the general public, participating as Standing Committee members, participating as Chairs of Standing Committees, and participating as Council representatives on agencies, boards, commissions and other bodies. Similarly, there are distinct and specialized roles expected of City staff in both the carrying out of their responsibilities and in dealing with the Council.