



INTEGRITY COMMISSIONER REPORT FOR INFORMATION

Report to Council Regarding MM41.25 Requesting Mayor Ford to Respond to Recent Events

Date:	December 5, 2013
To:	City Council
From:	Integrity Commissioner
Wards:	All
Reference Number:	

SUMMARY

City Council adopted a six – part motion (MM41.25) on November 13, 2013 regarding the conduct of Mayor Ford. The motion asked "the Integrity Commissioner to report back to City Council on the concerns raised in Part 1 through 5 above in regard to the Councillors' *Code of Conduct*." This report:

- 1) identifies the Code of Conduct concerns arising from MM41.25;
- 2) identifies other issues arising from MM41.25;
- 3) discusses Member of Council accountability and the enforcement of the *Code of Conduct*;
- 4) recommends no additional *Code of Conduct* investigation or action be taken in relation to MM41.25.

RECOMMENDATIONS

The Integrity Commissioner recommends that City Council receive this report for information.

FINANCIAL IMPACT

This report will have no financial impact.

DECISION HISTORY

By Notice of Motion MM41.25, Council was asked to adopt five items in relation to recent events involving the conduct of the Mayor.

MM41.25 was adopted as amended by City Council on November 13, 2013.

ISSUE BACKGROUND

The Summary provided to City Council in MM41.25 states:

Recent evidence, documents, pictures and statements have been presented to residents of the City of Toronto which raise significant concerns and have serious consequences for the Mayor, City Council and the City of Toronto.

This information presents a disturbing picture of the conduct of the Mayor of the City of Toronto.

Toronto Police have confirmed they have an electronic file that is "consistent with a video described in the media" allegedly showing the Mayor in compromising circumstances which are unbecoming of the Mayor of Toronto.

Mayor Ford wrote a character reference on City of Toronto Mayor letterhead for Alexander "Sandro" Lisi, an alleged drug dealer who was in the process of being sentenced for threatening to kill a former girlfriend.

Police have documented Mayor Ford in very questionable circumstances receiving items from Alexander "Sandro" Lisi.

The evidence presented to date suggests the Mayor has a substance abuse problem.

The Mayor consorts with known criminals and/or individuals involved in the sale and distribution of drugs. The Mayor misled the residents of the City of Toronto with regard to the existence of a video in which he was involved and/or participated in the use of crack cocaine.

We as a Council believe the Mayor's conduct is unacceptable and must stop. He is hurting himself. He is hurting the City of Toronto.

The motion adopted by Council included the following five parts:

1. City Council request Mayor Rob Ford to apologize for misleading the City of Toronto as to the existence of a video in which he appears to be involved in the use of drugs.
2. City Council urge Mayor Rob Ford to co-operate fully with the Toronto Police in their investigation of these matters by meeting with them in order to respond to questions arising from their investigation.
3. City Council request Mayor Rob Ford to apologize for writing a letter of reference for Alexander "Sandro" Lisi, an alleged drug dealer, on City of Toronto letterhead.
4. City Council request Mayor Ford to answer to Members of Council on the aforementioned subjects directly and not through the media.
5. City Council urge Mayor Rob Ford to take a temporary leave of absence to address his personal issues, then return to lead the city in the capacity for which he was elected.

In all of the circumstances, Council decided not to refer the items in MM41.25 to the Integrity Commissioner for an investigation and a report back on recommended sanctions. Instead, Council amended MM41.25 by adding a sixth point, that the Integrity Commissioner report back to City Council on the concerns raised in Part 1 through 5 above in regard to the *Code of Conduct*.¹

The Background to the Motion

Members' Motion MM41.25 was precipitated by a number of revelations in the media. The Chief of Police confirmed the existence of a video described by the media in May which appeared to show the Mayor smoking an illicit drug. After earlier denials, in November the Mayor admitted to smoking "crack cocaine." The video in question has not been released to the public and was not before Council at the time of the November Council meeting.

On October 30, 2013, a ruling from the Superior Court of Justice was made concerning an Information to Obtain a Search Warrant (ITO) filed by the Toronto Police in support of a warrant to search a residence. A redacted version of the ITO was made public as a result of the ruling. Some of the information released on October 30, 2013 included surveillance reports about the Mayor associating with an individual who was the subject of a police investigation.

In October another ruling by the Superior Court of Justice released a character reference letter, signed by Mayor Ford, that had been filed at a sentencing proceeding

¹ The item carried with votes cast for each of the first five parts as follows: 1. 36-6; 2. 34-5; 3. 36-6; 4. 33-9; 5. 37-5

in June of 2013. The reference letter was released on-line by the media and was on Office of the Mayor letterhead. It identified the subject (who was the individual above named in the ITO) as a former member of the Mayor's campaign team who had worked hard and "displayed exceptional leadership skills."

Material Reviewed In Preparation of the Report

For this report, I reviewed materials that were available to members at the time of the Council meeting on November 13, 2013. These include:

- the press conference held by the Chief of Police on October 31, 2013;
- a copy of the character letter signed by the Mayor and dated June 4, 2013;
- a copy of the redacted Information to Obtain a Search Warrant that was released on October 30, 2013 by Justice Ian Nordheimer of the Superior Court of Justice;
- the press conference granted by the Mayor on November 5, 2013 in which he admitted to having tried crack cocaine in the past, perhaps while intoxicated.

I was present for the debate during MM41.25 on November 13, 2013. I met with the Mayor to discuss this report.

The Issues

On reviewing the motions that were rejected and adopted on November 13, 2013, I identified three issues for discussion and report to Council:

1. Were *Code of Conduct* concerns raised by Items #1-5 in MM41.25?
2. Were other concerns raised by Items #1-5 in MM41.25 that fall outside of the *Code of Conduct*?
3. Is further action by Council being recommended in relation to MM41.25?

Summary of the Analysis

The responses to issues 1 and 2 above have been summarized in table format. The table is followed by a discussion of Member of Council accountability, enforcement of the *Code of Conduct* and recommendations on further action.

Table 1: Summary of Issues – MM41.25

Items in MM41.25	Potential Code of Conduct Concerns	Other Issues	Action Taken by Council
Misleading the Public about the Video	Article XIV – Discreditable Conduct	<u>Jurisdiction Issue</u> : Potential application of Federal legislation; might require referral to police under <i>Complaint Protocol</i>	Apology requested by Council
Urging the Mayor to cooperate with the Police	<u>Preamble</u> : Members should uphold the law. <u>Provisions</u> : Not required to cooperate with police investigations into personal conduct	Members have rights under the <i>Canadian Charter of Rights Freedoms</i>	Request made by council for cooperation
Writing a letter of reference for an alleged drug dealer on City letterhead	Article VI – Use of City Property, Services and Other Resources; Article VIII – Improper Use of Influence	<u>Procedural Matter</u> : COTA and Complaint Protocol not applied	Apology requested by Council
Council’s request to have the Mayor respond directly to items 1, 2 and 3 and not through the media	<i>Code of Conduct</i> does not apply	<u>Procedural Matter</u> : COTA and Complaint Protocol not applied	Mayor responded to questions during debate on MM41.25
Council urges the Mayor to take a temporary leave of absence	<i>Code of Conduct</i> does not apply; this item involves capacity or illness rather than conduct		Council’s request made that the Mayor take a leave of absence

The Accountability of Members of Council: Multiple Sources

Motion MM41.25 reflects the reality that Members of Council are held accountable to the public in multiple ways. Broadly speaking, there are three areas of accountability for elected officials in the City of Toronto: legal, political, ethical.

Municipal officials are governed by both provincial and federal legislation such as the *Municipal Conflict of Interest Act* and the *Criminal Code of Canada*. These laws are enforced in the courts by an independent judiciary. Politically, elected officials are answerable to the public at election time, and between elections through the media and on-line technologies. Ethically, the City of Toronto created an enforceable *Code of Conduct* overseen by Council and administered by the Integrity Commissioner. These areas of accountability can overlap, depending on the circumstances.

The Code of Conduct

The *Code of Conduct* is not the final word on all manner of member conduct. It operates in conjunction with the other sources of accountability described above. The *Code of Conduct* contains both specific provisions and a preamble that is aspirational in nature.

The Preamble to the *Code of Conduct* sets out the following key statements of principle:

- Members of Council shall serve and be seen to serve their constituents in a conscientious and diligent manner;
- Members of Council should be committed to performing their functions with integrity and to avoiding the improper use of the influence of their office, and conflicts of interest, both apparent and real;
- Members of Council are expected to perform their duties in office and arrange their private affairs in a manner that promotes public confidence and will bear close public scrutiny; and
- Members of Council shall seek to serve the public interest by upholding both the letter and the spirit of the laws of the Federal Parliament and Ontario Legislature, and the laws and policies adopted by City Council.

The sections of the *Code of Conduct* are interpreted with reference to these key statements of principle. The statements of principle are not the foundation for a finding of a breach: this is reserved for the specific numbered provisions found in the body of the *Code of Conduct*. These are subject to enforcement by Council using either the sanctions found in the *City of Toronto Act, 2006* (“COTA”) or the “Other Actions” contained in Article XVIII of the *Code of Conduct*. One of the actions available to Council is to request that a Member of Council apologize for a breach of the *Code of Conduct*.

Council has established a *Complaint Protocol* which sets out procedures for making a complaint. In addition, section 160 of the COTA allows Council to request the Integrity Commissioner to conduct an inquiry about whether a member has contravened the *Code of Conduct*. Any member who faces potential sanction has the opportunity to:

- respond to the allegations;
- have counsel if he/she wishes;
- pay for counsel from their office budget; and
- be advised prior to a matter being considered by Council as to the recommendations;

- where there is no pecuniary interest, to speak to the matter at Council.²

The *Complaint Protocol* also sets out specific areas that do not fall within the Integrity Commissioner's mandate and by extension, Council's jurisdiction. These include allegations of a breach of the *Municipal Conflict of Interest Act* or the *Criminal Code of Canada*.

As summarized in Table 1, two parts of MM41.25 raised *Code of Conduct* concerns and led to requests for an apology, which is an action available under the *Code of Conduct*. Other parts of the motion raised procedural questions under *COTA* and the *Complaint Protocol*.

Analysis and Recommendations

On November 13 and 14, 2013, Toronto City Council was confronted with ongoing revelations about a member's conduct and judgment. Media locally, national and internationally was paying attention. Council identified *Code of Conduct* concerns and other issues outside of the *Code of Conduct* including questions of suitability for executive responsibility and cooperation with an external investigation. There was significant pressure to take action and Council adopted MM41.25 in that context.

Portions of MM41.25 could have been the subject of inquiry, recommendation and report by the Integrity Commissioner. Council combined the *Code of Conduct* concerns with other non-*Code* concerns and in some cases requested apologies, an action that is available to Council under the *Code of Conduct*. The procedures for Council to refer an inquiry under the *Code of Conduct* have been described. The consistent application of Council's own procedures is important. When a public body makes a decision that affects the rights or privileges of another, it is bound to provide an opportunity to be heard and to observe the rules of natural justice, including the right to be heard and to be judged impartially.

City Council above all must serve the public interest. This flows from the *City of Toronto Act* in which the first enumerated role of Council is to "represent the public and consider the well-being and interests of the City." These principles were referred to during the debate on November 13, 2013. Council is also the custodian of the ethics regime at the City of Toronto. As Council has recognized, when Councillors are considering complaints under the *Code of Conduct*, they are in a role that is quasi-adjudicative. In carrying out this role, Council is well served by adopting an attitude of measured, fact-based and procedurally consistent action. This is important for the member who faces sanction, for the public, and for future City Councils relying on prior decisions.

Therefore, I recommend that where Council is confronted with conduct issues that may involve the *Code of Conduct*, it seek information or advice prior to departing from its procedures for inquiry, report and sanctions/remedial measures under the *Code of*

² *Magder v. Ford* 2013, ONSC 263 (Ont.Div.Court) at para 42.

Conduct. Advice on the legal aspects of these questions would come from the City Solicitor. Policy and partial considerations on the application of the *Code of Conduct* and the *Complaint Protocol* are available from the Integrity Commissioner.

Finally, in the case of the MM41.25 concerns, I recommend that no further inquiry be undertaken. At the meeting of November 13 and 14, 2013, Council asked questions, received answers and apologies from the Mayor and made recommendations with the support of a sizable majority of Council. In the event that new information comes to light with new accountability issues, then Council may address those issues at the appropriate time.

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SIGNATURE

Original signed

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