



OFFICE OF THE INTEGRITY COMMISSIONER

**OFFICE OF THE INTEGRITY COMMISSIONER
REPORT ON ACTIVITY
July 2015 – December 2015**

**Valerie Jepson
Integrity Commissioner
Date: January 28, 2016**

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Introduction

This is a report on the activities of the Office of the Integrity Commissioner for the six month period of July 1, 2015 to December 31, 2015, made pursuant to section 162(1) of the *City of Toronto Act, 2006* and section 3-7 of Chapter 3 of the *Toronto Municipal Code*.

As indicated in the most recent annual report filed¹, the Office of the Integrity Commissioner is transitioning from filing an annual report based on a July to June reporting period to an annual report based on the calendar year. This Report on Activity of the Office therefore discusses the activities from July 1 to December 31, 2015 and, to establish a baseline of activities for future reporting years, it includes summary statistical information for the entire 2015 calendar year. The next report on activity will be an Annual Report filed in early 2017 for the 2016 calendar year.

¹ [July 2014 to June 2015 Annual Report](http://www.toronto.ca/legdocs/mmis/2015/cc/bgrd/backgroundfile-81922.pdf)
<http://www.toronto.ca/legdocs/mmis/2015/cc/bgrd/backgroundfile-81922.pdf>

Commissioner's Message

A number of accomplishments were achieved during this short reporting period, which I describe throughout this report. Responding to requests for advice and complaints remained my primary focus, but I was also engaged in substantial policy projects including the City Council-directed review of the City's accountability framework, the Government of Ontario's consultation with respect to review of the *City of Toronto Act, 2006* and the *Municipal Conflict of Interest Act*, and reviewing and streamlining the gift disclosure process for members of Council.

Case Work

In the last six months of 2015, I issued eight (8) reports concluding twenty-five (25) complaints, responded to more than 73² requests for advice from members of Council or local boards and to more than 138³ requests for advice or information from residents and City staff. I am happy to report that we noticed an uptick in the requests for advice coming from the local board sector, which I attribute, in part, to the Office's outreach and education efforts.

Review of the City's Accountability Officers

At its meeting on March 31, April 1 and 2, 2015, City Council directed an external review of the four Accountability Officers' functions. The Office of the City Manager engaged Lorne Sossin, Dean of Osgoode Hall Law School and former Integrity Commissioner, to lead the review. Dean Sossin's review process was consultative and productive. His report recognized that the accountability framework in place at the City of Toronto is sophisticated and well regarded. He offered a number of suggestions to try to improve coordination between the Offices, including that the Memorandum of Understanding in place between this Office and the Office of the Lobbyist Registry be expanded to include all four Accountability Officers. Prior to Dean Sossin's report to City Council, a four-way Memorandum of Understanding was signed.

Dean Sossin's most substantial recommendation was that City Council should consider cross-appointing one person to fill the role of Integrity Commissioner as well as Lobbyist Registrar. As set out in the report, there are a number of compelling reasons to consider this option, but there are also a number of risks and contingencies that need to be addressed before such a cross-appointment can be implemented. In order to

² Please refer to Table 2 of Appendix 1 for a complete statistical breakdown.

³ Please refer to Table 4 of Appendix 1 for a complete statistical breakdown.

facilitate proper consideration of this significant governance change, City Council approved the recommendation of the City Manager to give this option further consideration and directed further review. I look forward to participating in future consultations about Dean Sossin's recommendations. The report and Council's direction will enable this Office to continue to find ways to work together with other Accountability Offices and with the City to make the best use of limited resources, while maintaining independence.

Establishing a Single Gift Disclosure Registry

During this reporting period, I also began my work to streamline and improve resources and processes for the Office's stakeholders. My first area of focus was to consolidate and simplify the process for gift disclosures. On December 31, 2015, the Office launched a comprehensive gift disclosure hub that includes necessary forms and a gift registry for all types of gifts.

Municipal Legislation Review Consultation

At the invitation of the Ministry of Municipal Affairs and Housing, I (along with all other integrity commissioners and accountability officers in Ontario) participated in a consultation for the review of municipal legislation including the *City of Toronto Act, 2006* and the *Municipal Conflict of Interest Act*. As I have noted previously, the legislative framework applicable to members of Council is long overdue for reform. I have made a number of recommendations including the need to simplify and clarify the framework for members of Council. I am optimistic that this round of review will lead to thoughtful reforms that will create a simplified system of clear standards of conduct, including conflict of interest, to which members of Council must adhere.

Internal Matters

Turning to internal matters, I am pleased to report progress in two key areas. First, the position of Integrity Officer, Investigations and Analysis, has been filled. The addition of this position significantly improves the capacity of the Office to address the current backlog of complaint investigations, which I described in the annual report filed in July 2015.

Second, with the assistance of the Office of the City Clerk, the Office has made progress in devising and implementing a records retention policy to ensure adherence to legislation, but also maintain the independence of the Office. I expect to report more fully on this component of the operations in my 2016 annual report.

Public Trust and Confidence

It continues to be my great privilege to carry out the work assigned to me by City Council. It is my goal that the work of this Office will help to improve the trust and confidence that Torontonians have in their City Council and its decision-making structure. There is much for the public to have confidence in.

Members of Council work hard. They grapple with complex policy issues and make impactful and significant decisions. Their work takes time, patience, cooperation and dedication. Members of Local Boards – often volunteers – work hard, too, giving up their free time to contribute to the City. All of this work is supported by a tireless and dedicated public service which fundamentally respects the role of elected officials and appointees and works to ensure that decisions are well-considered, informed, and transparent.

Gaining the trust and confidence of the public is challenged when the public sees members of Council behaving in ways that would not be tolerated at their own work place or failing to address questions about possible conflicts of interest or possible improper motives. The Code of Conduct provides guidance about the things a member of Council or a local board can do to improve trust and confidence and it appropriately sets the bar high.

It is often felt by those bound by any given code of conduct that they do not need a code of conduct to govern their own personal integrity or moral code. For instance, I have heard that a gift of a single dinner would not compromise a person's objectivity. That may be the case, but at the City of Toronto the Code of Conduct achieves a much greater objective than any one person's personal integrity: by setting standards that address concerns about even the appearance of impropriety, the Code protects and enhances the integrity and reputation of the City Council and the City of Toronto as a whole.

I am available to members of Council and local boards to discuss how the Code of Conduct can guide their actions to proactively maintain and strengthen the trust and confidence that Torontonians have in the important work that their representatives perform every day.

Looking Ahead

I have established the following core objectives for the work of the Office of the Integrity Commissioner.

1. Provide timely, accurate, consistent and practical responses to requests for advice (policy and compliance) from Members of Council and local boards.
2. Carry out investigations in a fair and appropriately thorough manner to respond to formal complaints.
3. Provide and deliver education and outreach to stakeholder groups.
4. Provide resources for all stakeholders that are consistent, accessible, practical and clear.
5. Position the Office of the Integrity Commissioner to perform all duties in as transparent a manner as possible, consistent with the principles of open government, while respecting the secrecy obligations imposed by the *City of Toronto Act, 2006*.
6. Maintain and build on the Office of the Integrity Commissioner's reputation as thought leader in the field of ethics and integrity for elected officials.
7. Maintain and build on the Office of the Integrity Commissioner's reputation as a key resource within the City of Toronto for advice, information and guidance about ethics and integrity.
8. Build up the Office of the Integrity Commissioner's institutional structures for long term sustainability.

In the year ahead, I plan to continue to place a priority on responding to requests for advice and completing investigations in a timely manner. I also intend to focus on the following policy projects: development of social media guidelines, refreshing and modernizing existing guidance, reviewing the adequacy of complaint procedures for work required under the Toronto Public Service Bylaw, and ongoing contributions to the provincial municipal legislation review and the Council-directed review of the accountability framework.

Valerie Jepson
Integrity Commissioner
January 28, 2016

Report on Activities

The work of this Office consists of four main types of activities:

- Providing timely advice to Members of Council and Local Boards (Restricted Definition);
- Educational activities to raise awareness of the standards of conduct and the Integrity Commissioner as a resource;
- Receiving, reviewing and investigating complaints; and,
- Responding to Council and other requests for policy recommendations.

Detailed statistical information about all of the activities of the Office is in Appendix 1 to this Report on Activity. What follows immediately below is an overview discussion of the work underway in each of the areas.

Section 1: Providing Timely Advice to Members of Council, Local Boards (Restricted Definition), and Adjudicative Boards

Providing advice is the most important function that an integrity or ethics commissioner performs. Residents rightfully require that elected and appointed officials meet the very highest standards of conduct. Elected and appointed officials operate in a complex environment often with several competing interests. It is not always obvious how to adhere to the standards of conduct when faced with multiple competing interests. It is also not always easy to transition professional skills and attributes from other sectors to the work of City Hall. It is therefore just and necessary that elected and appointed officials have a resource available to them to assist them in applying standards of conduct to the often-complex circumstances that arise.

Advice is provided to all requestors in a timely manner – usually within a few hours. A more complex piece of advice may require additional time. The Office provided seventy-three (73) pieces of advice during this reporting period.

The following are samples of the requests for advice received during the reporting period and are produced below to help elected and appointed members identify issues and to illuminate the approach taken by the Commissioner. The samples are not a replacement for specific advice.

Sample Advice

Sample 1 – Best practices for dealing with MCIA interacts outside of the meeting (Member of Council)

A Member of Council sought advice about the best practice for dealing with a constituent who needed assistance with respect to a matter for which the Councillor had a pecuniary interest within the meaning of the *Municipal Conflict of Interest Act*.⁴ The Councillor was advised that an alternate member of Council should be designated to deal with the issues/inquiries of that constituent, that relevant City staff should be notified of the pecuniary interest and that the constituent should be informed of the conflict of interest and redirected to the alternate Councillor. The Integrity Commissioner advised that the Councillor must ensure that staff in the Councillor's office are aware of the recusal and do not deal with this matter.

Sample 2 – Outside employment (Member of an Adjudicative Board)

A Member of an adjudicative board requested advice about whether it is permissible to accept an employment offer to work in the office of an elected official from another order of government. The work of the adjudicative board was unlikely to intersect with the Member's ordinary duties for the new employer. The Integrity Commissioner advised that there are no express restrictions in either the Code of Conduct or *Municipal Conflict of Interest Act*⁵ with respect to outside employment. However, the Member was advised to inform the new employer of the position on the adjudicative board, inform the local board of the new employment and to be alert to circumstances when the work may overlap so that the Member can seek specific advice or provide clear explanations about the two separate roles and the jurisdiction of each office.

Sample 3 – Writing a reference letter for a personal friend (Member of Council)

A Member of Council sought advice about writing a character reference for a long-time friend. The Commissioner advised that a character reference could be provided but that it should not be placed on City of Toronto letterhead.

⁴ R.S.O. 1990, c. M.50.

⁵ Ibid.

Sample 4 – Councillor's role in relation to fundraising for a non-profit organization
(Member of Council)

A Member of Council requested advice on the proper role of a councillor in relation to fundraising for a non-profit organization. The Commissioner advised that the Member and staff should not become involved with any direct appeal fundraising but that the Member could be listed as an attendee in promotional material for the event, and also that the event could not be named after, or marketed in the name of, the Councillor. Members of Council should not be involved in direct appeal fundraising because of the potential that a member could solicit funds from businesses or individuals who have business with the City and who may feel pressured to, or able to gain an advantage by, making a donation. Lastly, the Commissioner advised that if the Councillor offered any public remarks, they should be limited to observations about the organization's work, rather than an appeal for fundraising support.

Sample 5 – Hosting of an all candidates debate for the federal election within a Councillor's riding
(Member of Council)

A Member of Council sought advice about whether a councillor would be able to host an all-candidates' debate for the federal election. The Commissioner advised that the Councillor's office should not organize the all-candidates' meeting because the risk was too great that the Councillor's actions could be perceived as favouring one candidate over another. Section 4.1 of the *Constituency Services and Office Budget Policy*, which states "The City of Toronto funds Councillor expenses that; ... do not support or feature any candidate in any municipal, school board, provincial, federal election or by-election, or promote consent or rejection of a question that has been submitted to electors."⁶

Reporting of Gifts and Benefits

There are very few circumstances under which members of Council and Local Boards (Restricted Definition) can receive a gift or benefit. Unlike other components of the Code of Conduct – which is principles based – the gift rule is quite specific and prescriptive. The Office regularly receives requests for advice about the appropriateness of gifts or benefits – primarily relating to invitations to attend dinners and receptions. There are exceptions within the gift rule to allow members to accommodate protocol or when attendance at an event fulfills an official function.

⁶ https://www1.toronto.ca/city_of_toronto/city_clerks/city_council/files/pdf/office-budget-policy.pdf

If a gift is given – and its value is over \$300 – it must be disclosed to the Integrity Commissioner. During the reporting period, the Office updated the forms and process for members to seek advice and disclose gifts, and also created a new, comprehensive registry on the Office's website⁷.

There are two types of permissible benefits that are routinely received and disclosed by members of Council: donations to member-organized community events and sponsored travel. In the last six months of 2015, the Office received thirteen (13) Donor Declaration Forms from the office of the City Clerk for Council Member-Organized Community Events. In addition, nine (9) Travel Declaration Forms were received from members of Council that were in compliance with the disclosure obligations outlined in Part IV (Gifts and Benefits) of the Code of Conduct.

Section 2: Educational Activities to Raise Awareness of the Standards of Conduct

Local Board Outreach

The Integrity Commissioner frequently attends meetings of local boards to improve awareness of the Code of Conduct. In the last six months of 2015, the Commissioner attended six (6) orientation sessions for new local board members, including adjudicative boards. When meeting with local boards, the Commissioner conveys four main messages:

- It is the obligation of every board member to know and understand the standards of conduct that apply to their actions as board members.
- Members of local boards are encouraged to contact the Integrity Commissioner to seek advice whenever there is a question about whether their actions are consistent with the Code of Conduct. Board members are reminded that seeking advice is beneficial, and not indicative of bad behaviour or questionable ethics, and cautioned against relying on their experience in the private sector or other organizations as guidelines for their conduct in the service of a local board.
- Local Board members are reminded that their interactions with each other and with the public or – in the case of adjudicative boards – the parties that come before them are a reflection on the board and the City of Toronto. The Commissioner reminds local board members that they have a role to play in

⁷ [Gifts, Benefits and Donations website \(http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=227c8998f1c60510VgnVCM10000071d60f89R CRD\)\)](http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=227c8998f1c60510VgnVCM10000071d60f89R CRD)

building up trust and confidence in the institution of the City of Toronto and their particular local board.

- Members are encouraged to work together to help each other meet the standards of conduct. Too often, discussions about possible conflicts of interest or other code compliance matters become heated exchanges causing board members to get defensive when these discussions should be focused on the collective effort of the board to protect the integrity of the board itself.

The Commissioner encourages local boards to routinely review their obligations under the Code of Conduct and is available to attend local board meetings to assist with this education.

Communication to Members of Council

From time to time, there are developments in the field of ethics and integrity that are relevant to members of Council. The Integrity Commissioner has written to members of Council on two occasions during the past reporting period to highlight new case law in relation to the *Municipal Conflict of Interest Act* and to highlight changes to how recent changes to the Toronto Public Service Bylaw impact members of Council's obligations under the Code of Conduct. These letters are found in Appendix 3 to this Report.

Resident, Staff, and Media Inquiries

A key component of outreach is responding to the high number of calls the Office receives from residents, city staff, and members of the press. In this reporting period, the Office responded to 138 resident, staff and media inquiries.

These inquiries range from purely informational requests about the complaint process or the Code of Conduct to requests for informal advice about reasonable expectations of appropriate conduct of officials bound by the Code of Conduct and interpretation of City policies in relation to the Code of Conduct.

Section 3: Receiving, Reviewing and Investigating Complaints

The Office handles all complaints received in accordance with the applicable Complaint Protocol.⁸ The Complaint Protocol provides both informal and formal procedures to resolve complaints. The Office's activities in relation to each are described below.

⁸ 1. [Code of Conduct Complaint Protocol for Members of Council](http://www1.toronto.ca/City%20Of%20Toronto/Integrity%20Commissioner/Shared%20Content/Files/code-of-conduct-complaint-protocol-for-members-of-council.pdf)
(<http://www1.toronto.ca/City%20Of%20Toronto/Integrity%20Commissioner/Shared%20Content/Files/code-of-conduct-complaint-protocol-for-members-of-council.pdf>)

Formal Complaints

There are two main components of a formal complaint: intake and investigation.

Intake

When a complaint is received, it is first reviewed before an investigation is commenced. The Complaint Protocol provides that the Integrity Commissioner must dismiss complaints where the subject matter is not within the scope of the Code of Conduct, such as dissatisfaction with the manner in which a member of Council represents the interests of a particular resident or an allegation that a member has contravened the *Municipal Conflict of Interest Act*.⁹ The Complaint Protocol also allows for the dismissal of a complaint if there are insufficient grounds to cause an inquiry. While complainants need not come with all the evidence in hand, they must have more than a mere suspicion and present reasonable and probable grounds that a contravention has occurred.

In this reporting period, there were twenty-three (23) complaints that were dismissed on the basis of being beyond the jurisdiction of this Office or having insufficient grounds to investigate.

Below are sample case summaries of reports dismissing complaints at the intake stage between July 1, 2015 and December 31, 2015. These summaries are provided to assist with awareness about the jurisdiction of the Integrity Commissioner. Not all cases can be described because they may risk revealing the identity of the parties, which is not permitted pursuant to section 162(1) of the *City of Toronto Act, 2006*.

Case Summary 1 – Allegations of breach stemming from use of social media during the election

A complaint was made against several members of Council who were also candidates in the October 2014 municipal election for the manner in which the members used Facebook and/or Twitter during the election period.

The complainant alleged that these members of Council used social media accounts for both their "Council Member Work" as well as for the purposes of their election campaigns, and did so without identifying the purpose of the accounts. The

2. [Code of Conduct Complaint Protocol for Members of Local Boards \(Restricted Definition\) including Adjudicative Boards](http://www1.toronto.ca/City%20Of%20Toronto/Integrity%20Commissioner/Shared%20Content/Files/code-of-conduct-complaint-protocol-for-members-of-local-boards.pdf)
(<http://www1.toronto.ca/City%20Of%20Toronto/Integrity%20Commissioner/Shared%20Content/Files/code-of-conduct-complaint-protocol-for-members-of-local-boards.pdf>)

⁹ See note **Error! Bookmark not defined.**, *supra*.

Complainant asserted that if a member of Council ever used a social media account for "Council Member Work", he or she could then never use that account for campaign purposes, and that the conduct of the members identified in the complaint was contrary to Articles VI (Use of City Property, Services and Other Resources), VIII (Improper Use of Influence), XV (Failure to Adhere to Council Policies and Procedures) of the *Code of Conduct for Members of City Council* (Code of Conduct) and in addition, constituted an unfair advantage to the named councillors in the October 2014 municipal election campaign.

While such a restriction may be best practice, and the practice most consistent with the overall objectives of the Code of Conduct, the policy framework in place at the time of the October 2014 election did not clearly articulate such a restriction. The Commissioner therefore declined to investigate the complaints because even if the evidence were to establish that any member of Council used social media accounts in the manner alleged, it could not lead to a finding that any councillor contravened the Code of Conduct.

The Commissioner noted that some of the issues raised in the complaint are important and need to be addressed. The Complainant was informed that the Commissioner is reviewing the social media policy for elected and appointed officials at the City of Toronto.

Case Summary 2 — Allegations about a non-councillor candidate

A member of the public complained that a candidate violated the Code by stealing other candidates' election signs in the 2006 election and, when confronted by the complainant, promising to provide additional services to the neighborhood in exchange for the complainant's silence.

In dismissing the complaint, I relied on Article III of the Code of Conduct, which provides that the Code applies to members of Council. While holding out the promise of City services in exchange for a promise that would benefit the candidate personally is the kind of behaviour that would contravene the Code, the Code does not apply to candidates who are not also elected officials at the time of the alleged wrongdoing.

Case Summary 3 – Allegations of breach stemming from conduct at meetings

A member of a local board (restricted definition) filed a complaint about other board members, alleging that their actions had prevented the complainant from being able to speak up or raise issues.

The Code of Conduct for Members of Local Boards (Restricted Definition) (like the Code for Members of Council) prohibits members from bullying, abusing, or intimidating their colleagues, staff, or members of the public. The facts alleged in the complaint showed

that despite the other board members' actions, the complainant was able to conduct business and take part in board meetings and no information had been presented to suggest that the alleged actions were bullying, abuse and/or intimidation. The complaint was dismissed because it did not present sufficient information to cause a possible contravention of the Code.

Investigations

Dismissed or Withdrawn Complaints

During this reporting period (July 1 – December 31, 2015), no cases were dismissed on their merits following an investigation, or withdrawn.

Reports to Council and Local/Adjudicative Boards

During this reporting period, two (2) complaints were reported to Council and the City's Local Boards (Restricted Definition) and Adjudicative Boards. Reports to Council and Local and Adjudicative Boards are made available on the website of the Office of the Integrity Commissioner.

Informal Complaints

The Complaint Protocol also includes an informal procedure. It is geared toward enabling and empowering a complainant to raise concerns about Code of Conduct complaints directly with the member. This is often an optimum method of resolution when the alleged transgression is minor or the issue relates to personal circumstances. Often, the Integrity Commissioner is copied on correspondence between the complainant and a member under the informal complaint protocol. The informal procedure allows the Integrity Commissioner to provide advice and information about ways to resolve the matter.

If the parties consent, the Integrity Commissioner can take a more active role in resolving informal complaints. Since July 2015, the Commissioner has been engaged in two (2) informal complaints.

The number of informal complaints is markedly lower in this reporting period compared to the annual average of informal complaints in recent years. This is because many of the complaints received in the 2013, 2014 and 2015 years were multiple complaints about the same conduct or included inquiries where the Commissioner was aware of an informal contact made by a complainant to a member of Council about a possible Code of Conduct issue.

Section 4: Policy Work

The Commissioner continued work on three significant policy initiatives during this reporting period: Participation and development of submissions in relation to the Provincial Review of Municipal Legislation; Review and development of social media policy; and, Roll out of the Toronto Public Service Bylaw.

Provincial Review of Municipal Legislation

On June 5, 2015, the Ministry of Municipal Affairs and Housing announced a long-awaited review of the provincial legislation that deals with the conduct of members of city councils across Ontario. The review includes the *Municipal Act, 2001*, the *City of Toronto Act, 2006* and the *Municipal Conflict of Interest Act*. The Ministry consulted with Integrity Commissioners across Ontario.

On October 30, 2015, I filed comprehensive submissions with the Ministry of Municipal Affairs. My complete submissions are at Appendix 2 to this report.

Social Media Policy

On November 12, 2015, I invited members of Council to comment on the key considerations that should inform a social media policy for members of Council and Local Board appointees. This consultation continued into the New Year. I plan to report to Council about this issue in March 2016.

Toronto Public Service Bylaw

The Toronto Public Service Bylaw designates the Integrity Commissioner as having responsibility to receive and investigate disclosure of wrongdoing about members of Council and local boards by members of the Toronto Public Service. It was envisioned that this process could be accommodated using the existing complaint protocol. The Commissioner is of the view that special protocols may be necessary to properly handle such matters and is therefore engaged in exploring what changes, if any, need to be made to the protocol.

Budget and Financial Information

The 2015 approved budget for the Office was \$427.6 thousand, which includes the annualization impact of transitioning from a part-time to full-time Commissioner and an enhancement for the creation of one Investigator/Analyst position.

The expenses of the Office during the reporting period are attached to this report as Appendix 4.

Appendix 1

Summary of Activities of the Office of the Integrity Commissioner January 1, 2015 – December 31, 2015

Work of the Office: Statistical Breakdown

Section 1: Advice

During this reporting period, members of Council and Board members received advice via telephone, in writing, or in person. Advice includes requests for information, specific application of circumstances to the Code of Conduct or City policies, and referrals to other sources.

Table 1 – Number of Members of Council and Local/Adjudicative Boards who sought advice

	Average recent activity (prior 3 years) ¹	2015 Sought Advice
Members of Council	43	39
Members of Local/Adjudicative Boards	1	10
Total	44	49

Table 2 – Advice Provided

	Average recent activity (prior 3 years) ²	2015 Advice Provided
Members of Council	170	170
Members of Local/Adjudicative Boards	1	15
Total	171	185

¹ For this report, the 2015 statistic is compared against a three year average for the same activity.

² For this report, the 2015 statistic is compared against a three year average for the same activity.

Section 2: Reporting of Gifts and Benefits

During this reporting period, members of Council disclosed a number of gifts and benefits for sponsored travel and donations to councillor-sponsored community events.

Table 3 – Number of Gifts and Benefits Disclosure Forms Received

	Average recent activity (prior 3 years) ³	2015
Donor Declaration Forms (Community Events)	14	16
Travel declaration Forms	7	14
General Gifts and Benefit Declarations Forms	0	0
Total:	21	30

Section 3: Policy Development, Outreach and Education Summary

The duties of the Office include providing education and outreach and consulting on City policies that involve City of Toronto accountability and transparency. Within the City, this means informing staff and local boards of the Integrity Commissioner's role as a resource for advice and of the obligations of City officials set out in the codes of conduct. As the first municipal integrity commissioner in Canada, the Office also serves as a model and educational resource for other governments and ethics officials.

Winter Activities 2015

February 13, 2015 – Discussions with Counsel to the Manitoba Law Reform Commission regarding a project to reform the Manitoba *Municipal Conflict of Interest Act*

February 26, 2015 – "Role of the Integrity Commissioner" presentation to the Board of Management of the Swansea Town Hall

March 3, 2015 – "Role of the Integrity Commissioner" presentation to the Board of Management of the Downtown Yonge Business Improvement Area

³ For this report, the 2015 statistic is compared against a three year average for the same activity.

March 4, 2015 – "Role of the Integrity Commissioner in the Accountability Framework" presentation to Councillor staff

March 18, 2015 – Discussions with representatives of the City of Calgary, Alberta regarding the role and function of the Integrity Commissioner

Spring/Summer Activities 2015

May 28, 2015 – Hosted the Annual Municipal Integrity Commissioners of Ontario Meeting ("MICO")

June 9, 2015 – "Ethical Framework" Presentation to staff of members of Council

June 18, 2015 – Attended the Municipal Legislation Review Consultation session hosted by the Ministry of Municipal Affairs and Housing

July 16, 2015 – "Ethical Framework" Presentation with staff of members of Council

July 24, 2015 - "City of Toronto Act (COTA)" Consultation with Deputy Minister LeBlanc and Accountability Offices

July to September, 2015 – Various meetings and discussions with Dean Lorne Sossin regarding the City Council directed review of the Accountability Officers

Fall Activities 2015

September 2, 2015 – "Role of the Integrity Commissioner" Presentation to the Committee of Adjustment

September 16, 2015 – "Role of the Integrity Commissioner" Presentation to the Property Standards Committee

September 18, 2015 - "Role of the Integrity Commissioner" Presentation to the Board of Management of the Liberty Village Business Improvement Area

September and October, 2015 – "Dealing with Difficult Behaviours", a co-presentation with the Toronto Ombudsman for members of Council and staff

October 6, 2015 - "Role of the Integrity Commissioner" Presentation to the Board of Management of the Bayview Leaside Business Improvement Area

October 27, 2015 - "Role of the Integrity Commissioner" Presentation to the Sign Variance Committee

November 30, 2015 – "Ten Notables about the Office of the Integrity Commissioner at the City of Toronto" Presentation to Office of the Conflict of Interest Commissioner (Ontario)

November 30, 2015 - "Role of the Integrity Commissioner" Presentation to the Board of Management of the Hillcrest Village Business Improvement Area

December 4, 2015 – "The Integrity Commissioner, Code, and Complaint Protocol" Presentation to Parks, Forestry, and Recreation

Section 4: Inquiries from Residents, Staff and Media

The Office handles request for information from staff, residents, and the media about topics such as how to make a complaint, how complaints are handled through the formal and informal procedures, information about the Code of Conduct, and where appropriate, referrals to other offices and institutions.

Table 4 - Intake Inquiries

	Average recent activity (prior 3 years) ⁴	2015 Inquiries
Residents	459	222
Staff	60	62
Media	-. ⁵	21
Total	519	305

Section 5: Complaints

The Complaint Protocol sets out the procedure to follow for informal and formal complaints. Informal complaints are resolved by letter, discussion, or meetings without engaging the formal process or requiring a report to Council. Informal resolutions do not require involvement of the Integrity Commissioner. Only those that involved the Integrity Commissioner are included in the statistics below. In contrast, formal complaints are filed by way of sworn affidavit under Part B of the Complaint Protocol and the Integrity Commissioner is required to review the complaints and respond.

The total number of new complaints received are shown in Table 5. The disposition and source of the formal complaints received during this reporting period are shown in Tables 6 and 7. The breakdown of the subject of complaints is shown in Table 8.

⁴ For this report, the 2015 statistic is compared against a three year average for the same activity.

⁵ Until 2015, media inquiries were included in resident inquiries for statistical reporting purposes.

Table 5 – Total New Complaints Received

	Average recent activity (prior 3 years) ⁶	2015 Complaints
Informal Complaints	151	14
Formal Complaints	24	34
Total Complaints	175	48

Table 6 - Status of Formal Complaints (including cases that were under investigation at the end of the last reporting period)

	Average recent activity (prior 3 years) ⁷	2015 Complaint Status
Rejected as beyond jurisdiction	4	28
Dismissed on Merits after investigation	6	3
Sustained and Reported to Council	3	4
Settled, Withdrawn or Abandoned	1	0
Rejected as Frivolous/Vexatious/Made in Bad Faith or Without Substance	1	0
Still Under Investigation/Deferred	18	12

⁶ For this report, the 2015 statistic is compared against a three year average for the same activity.

⁷ For this report, the 2015 statistic is compared against a three year average for the same activity.

Table 7 - Source of New Formal Complaints Received (Who filed the complaints?)

	Average recent activity (prior 3 years) ⁸	2015 Source of Complaints
Staff	0	0
Members of Public	23	33
Members of Local Boards	0	1
Members of Council	1	0
References from Council	0	0
Total:	24	34

Table 8 – New Formal Complaints Received by Respondent (Who is the complaint about?)

	Average recent activity (prior 3 years) ⁹	Calendar Year 2015
Members of Council	23	33
Members of Local Boards/Adjudicative Boards	1	1
Total:	24	34

⁸ For this report, the 2015 statistic is compared against a three year average for the same activity.

⁹ For this report, the 2015 statistic is compared against a three year average for the same activity.

Section 6: Website Visits and Views¹⁰

In addition to receiving direct requests for advice and information, the Office of the Integrity Commissioner's website provides visitors with access to the Codes of Conduct, City protocols and policies, reports to Council, and information for City officials. The following table shows activity for the web site during the reporting period.

Table 9 - Web Site Analytics

	Average recent activity (prior 3 years) ¹¹	2015 Website Visits	Average recent activity (prior 3 years) ¹²	2015 Website Views
January	1243	3291	3103	5637
February	409	736	1208	1795
March	488	855	1532	2283
April	465	842	1463	2215
May	664	1454	1934	3131
June	435	748	1407	2081
July	1096	620	2313	1736
August	668	496	1351	1178
September	949	1050	2329	3150
October	936	806	2053	2201
November	1050	660	1884	1620
December	971	651	1867	1705

¹⁰ A visit is a series of page views, beginning when a visitor's browser requests the first page from the internet server, and ending when the visitor leaves the site or remains idle beyond the idle-time limit. A view is a page view that is displayed by a browser. [Web trends Glossary, page 58](#) (<http://insideto.toronto.ca/itweb/computertraining/pdf/WebTrendsInDepthGuide.pdf>)

¹¹ For this report, the 2015 statistic is compared against a three year average for the same activity.

¹² For this report, the 2015 statistic is compared against a three year average for the same activity.

Appendix 2



OFFICE OF THE INTEGRITY COMMISSIONER

SUBMISSIONS IN RESPONSE TO THE MUNICIPAL LEGISLATION REVIEW

Valerie Jepson
Integrity Commissioner
October 30, 2015

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Submissions of the Integrity Commissioner for the City of Toronto

Introduction

Together with the other Accountability Officers (the Auditor General, the Lobbyist Registrar and the Ombudsman), the Integrity Commissioner is a part of the most well-developed accountability framework at the municipal level in the Province of Ontario. The City of Toronto appointed its first Integrity Commissioner in June 2004 prior to the enactment of Part V of the *City of Toronto Act, 2006* (COTA),¹ which required the appointment of an Integrity Commissioner.

Through its bylaws, Toronto City Council has taken a number of important steps to enhance the accountability framework. The ongoing review of COTA and the *Municipal Conflict of Interest Act*² presents an opportunity to further strengthen the accountability framework.

These submissions consist of four parts. The first part includes recommendations about how COTA can be strengthened to enhance the independence and accountability of the Integrity Commissioner. The second part outlines how the statutory framework relating to confidentiality can be improved. The third part outlines the legislative changes necessary to modernize and streamline the regulation of conflicts of interest for elected and appointed officials. The fourth part contains a recommendation to introduce annual disclosures of financial and other interests of elected officials as a part of the overall accountability framework. Each set of recommendations is followed by a brief rationale.

These submissions reflect the views of the Integrity Commissioner, not the views of Toronto City Council. The Integrity Commissioner makes these submissions on the basis of the Office's experience over the past decade.

Recommendations about Independence and Accountability

Recommendation 1

It is recommended that COTA be amended to expressly recognize and entrench the following features of independence:

- a. That the position of Integrity Commissioner is an independent "Officer of Council" similar in status to the Provincial Integrity Commissioner, an Officer of the Assembly.

¹ S.O. 2006, C. 11, Schedule A.

² R.S.O. 1990, C. M.50.

- b. That the Office of the Integrity Commissioner is an independent institution, separate from the City of Toronto, for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.³
- c. That the Integrity Commissioner has full control of, and is responsible for, the management of his or her office, independent from City Council and City administration.
- d. That the Integrity Commissioner is appointed for a fixed term.
- e. That the Integrity Commissioner can only be appointed or removed for cause on a two-thirds vote of all Council members.
- f. That the Integrity Commissioner is required to table an annual report before Council.
- g. That the Office of the Integrity Commissioner is subject to an external audit.

Comments

Section 159(1) of COTA requires that the Integrity Commissioner carries out her work in an "independent manner." This means that the Commissioner must be free to administer her office and carry out her duties independently from City Council and City administration.

To recognize and entrench the independence of the Integrity Commissioner (as well as the other Accountability Officers), Toronto City Council adopted a comprehensive By-law (Chapter 3 of the *Toronto Municipal Code*, entitled "Accountability Officers") to establish a framework to address necessary governance, policy and support mechanisms required to effectively carry out the functions and ensure independence of each Officer. By enacting this By-law, Toronto City Council demonstrated leadership in the area of accountability and offers a model that stands apart from other municipalities in Ontario.

The Accountability Officers By-law is appended to these submissions at Appendix 1. The process and principles leading to the By-law are well documented in reports provided to Toronto City Council by the Toronto Public Service, which are appended to these submissions at Appendix 2.

The Accountability Officers By-Law reinforces the fact that the City's Accountability Officers are separate and independent from the City's administration and City Council and provides important principles in relation to the independence of the Accountability Officers.

³ R.S.O. 1990, c. M.56.

The principles of independence and accountability are of sufficient importance to the proper functioning of the Office of the Integrity Commissioner that the features outlined in the Accountability Officers By-law ought to be enshrined in the governing legislation.

Recommendation 2

It is recommended that COTA be amended to empower and require the City to protect the Integrity Commissioner and all Accountability Officers against risks of pecuniary loss or liability related to the performance of their duties, whether or not they are City employees.

Comments

Exposure to the risk of lawsuits and judicial reviews related to the performance of their duties is a significant risk for Accountability Officers. This kind of risk could improperly give rise to unreasonable personal liability or negatively impact the independence of the Office. The City should be required to protect its Accountability Officers against risks of pecuniary loss or liability related to the performance of their duties, whether or not they are employees.

Recommendations about Confidentiality

Recommendation 3

It is recommended that section 161 of COTA (the secrecy provision) be amended to make clear that the secrecy provisions in COTA prevail over the *Municipal Freedom of Information and Protection of Privacy Act* and all other provincial legislation.

Comments

Strong and unambiguous confidentiality and secrecy provisions in COTA are necessary for the effective functioning of the Integrity Commissioner.

This need for Accountability Officers to maintain confidentiality and preserve secrecy has underpinned all of the development work leading to the current accountability framework at the City of Toronto. The City Manager's Report leading to the Accountability Officers By-law describes the importance of confidentiality as follows:

Confidentiality Provisions

Independent officers are required to maintain confidentiality in the course of their duties and must not disclose information provided to them in

confidence. Confidentiality engenders trust in the accountability function, and ensures the offices are a safe place to turn to for a resolution.⁴

In *Building a 21st Century City*, the Joint Ontario-City of Toronto Task Force to Review the City of Toronto Acts and other Private (Special) Legislation⁵ stated:

A. Oversight Functions

To ensure high standards of professionalism and ethics, Toronto requires strong oversight functions.

The Task Force therefore recommends that the new Act require (not simply allow) the City to have an empowered and independent integrity commissioner, ombudsman and auditor general, and a lobbyist registry. *We also recommend that the following powers be made available to the appropriate officials: ability to protect confidential information despite the Municipal Freedom of Information and Protection of Privacy Act ...* [emphasis added]

The recent introduction of the *Public Sector and MPP Accountability and Transparency Act, 2014*, S.O. 2014 C.13, Schedule 9, may introduce an ambiguity or conflict with respect to the existing secrecy provisions. To the extent the new legislation overrides, weakens or negates the secrecy provisions, this harms the ability of Accountability Officers to carry out their duties. The proposed change would rectify any potential ambiguity.

Recommendation 4

It is recommended that COTA be amended to clarify and confirm that the duty of confidentiality imposed by sections 161, 169, 173 and 181 does not prevent the Integrity Commissioner and the other Accountability Officers from sharing information with each other, in furtherance of their duties, subject to their reciprocal duties of secrecy and confidentiality.

Comments

It is sometimes necessary in order to perform their duties under COTA for Accountability Officers to share information with each other. Examples of this include inquiries or investigations into the same or similar matters, joint education and staff training, and the development of policies and protocols on common issues. Sharing information in such circumstances falls within the exemption to the existing secrecy provisions for information to be disclosed "otherwise in accordance with this Part" (see for example s.

⁴ Appendix 2, at p. 6

⁵ <http://www.mah.gov.on.ca/Asset1954.aspx>, at p. 7

161(2)(b)). However, for clarity, it should be stated explicitly that Accountability Officers may disclose information to each other, subject to the Part V reciprocal duty of secrecy under which all Accountability Officers operate.

Recommendations to Modernize and Streamline the Regulation of Conflicts of Interest for Elected and Appointed Officials

Recommendation 5

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to clarify and confirm: (a) the ability of City Council to include provisions about conflicts of interest in its Code of Conduct; and, (b) the jurisdiction of the Integrity Commissioner to provide advice and investigate complaints about conflicts of interest.⁶

Recommendation 6

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to clarify that seeking and following advice from the Integrity Commissioner may be considered by the Court in an application under the *Municipal Conflict of Interest Act*.

Recommendation 7

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to introduce a modern definition of conflict of interest that applies broadly to address the reality that conflicts of interest can exist beyond pecuniary interests and in respect of all aspects of a member's activity (not just voting). The definition could be modelled after the definition of conflict of interest in similar legislation applicable to elected officials in the Federal Parliament or provincial legislatures.⁷

Recommendation 8

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to clarify that those subject to an imposition of penalty or other remedial measure(s) by Council are permitted to make representations to Council without contravening the Code of Conduct or the *Municipal Conflict of Interest Act*.

⁶ In his report, titled, *Updating the Ethical Infrastructure* at p. 160 [*infra* note, 8], Justice Cunningham concluded that it was within the authority of municipalities to include a conflict of interest provision in Codes of Conduct. However, this could be confirmed in section 159 of COTA.

⁷ For example, section 2 and the definition of "private interest" in the *Members' Integrity Act, 1994*, S.O. 1994, C. 38.

Comments about recommendations 5-8

Recommendations 5-8 are consistent with the framework envisioned by the Honourable J. Douglas Cunningham in the *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure* (the "Cunningham Report")⁸ and in particular his recommendations 7, 8, 9, 10, 11, 12, 13, 14 and 25. The framework proposed by Justice Cunningham brings together the *Municipal Conflict of Interest Act* regime with the Code of Conduct/Integrity Commissioner regime.

From the perspective of municipal councillors, the status quo is fragmented and unnecessarily complex. This is because there exist two regimes for compliance. Members of Council and Local Boards (Restricted Definition) (collectively, "Members") are bound by the *Municipal Conflict of Interest Act* in relation to conflicts of interests that arise from pecuniary interests. Members are also bound by Codes of Conduct and can be subject to investigation for failure to comply. Members in Toronto also are able to seek binding advice from the Integrity Commissioner in relation to Code compliance but not compliance with the *Municipal Conflict of Interest Act*.

From the perspective of the public, the status quo is inaccessible, requiring citizens to commence formal court proceedings to raise concerns about conflicts of interest.

Further rationale for the need to move to a more cohesive framework is well documented in the annual reports of the Office of the Integrity Commissioner⁹ and in the findings and recommendations of the Cunningham Report.¹⁰

Recommendation to Introduce Annual Disclosure of Private Interests for Elected Officials

Recommendation 9

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to introduce mandatory annual disclosure of private interests for elected officials in Toronto and that the duty of receiving, reviewing, and publishing (as appropriate) the

⁸ http://www.mississaugainquiry.ca/report/pdf/MJI_Report.pdf.

⁹ 1. Interim Report of the Integrity Commissioner – April 11, 2005, page 7

(<http://www.toronto.ca/legdocs/2005/agendas/council/cc050412/nomj%2834%29.pdf>)

2. May 8, 2006 – Integrity Commissioner Annual Report for September 1, 2004 to December 31, 2005, page 14

(<http://www1.toronto.ca/City%20Of%20Toronto/Integrity%20Commissioner/Shared%20Content/Files/integrity-commissioner-annual-report-2005-2006.pdf>)

3. July 8, 2008 – Integrity Commissioner End of Term Report – 2008, page 10-11

(<http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-14756.pdf>)

4. July 29, 2009 – Integrity Commissioner Annual Report 2009, page 11

(<http://www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-22620.pdf>)

¹⁰ Cunningham Report, *supra*, note 8.

annual disclosure statements be assigned to the Integrity Commissioner. The types of interests to be disclosed could include financial interests (*i.e.* assets, liabilities, real property, debts), outside employment, and outside directorships. The amendments could empower the Toronto City Council to develop a financial disclosure system best suited to Toronto.

Comments

Several jurisdictions across Canada and in the United States permit or require mandatory disclosure of personal interests of elected officials at the municipal level.

The Province of Ontario lags behind other provinces in this regard. The Provinces of Quebec, British Columbia, Saskatchewan, Newfoundland and Labrador, and Manitoba either require or permit municipalities to introduce personal financial disclosure systems.¹¹ In British Columbia, all elected officials, including local government officials, are required to make annual financial disclosures.¹² In the absence of legislative authority or requirement, the members of the Calgary City Council disclose their financial interests on an annual basis.¹³

To put Toronto in context with other similar-sized municipalities, one can look to the American experience. The four largest U.S. cities all require financial disclosures.

- New York City has required financial disclosures since 1975.¹⁴ Disclosures are required annually for approximately 8,500 elected officials, employees, and candidates, who must disclose their financial affairs, outside positions and interests, as well as those of their spouses, domestic partners, and dependent children.¹⁵
- The City of Los Angeles requires elected officials, board members, commissioners, and agency heads to make specific disclosures *in addition to* the standard disclosures required for all local government officials upon being

¹¹ *An Act Respecting Elections and Referendums in Municipalities*, R.S.Q., c. E-2.2, s. 357 (http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/E_2_2/E2_2_A.html); *Financial Disclosure Act*, R.S.B.C. 1996, C. 139, s. 4 (requiring disclosure for muni officials) (http://www.bclaws.ca/civix/document/id/complete/statreg/96139_01); *The Municipalities Act*, C. M-36.1, S.S., 2005, s. 142 (municipalities may require disclosure) (<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/M36-1.pdf>); *Municipalities Act*, 1999, S.N.L.1999, C. M-24, s. 210 (<http://www.assembly.nl.ca/legislation/sr/statutes/m24.htm#210>); *Municipal Council Conflict of Interest Act*, C.C.S.M. C. M255, ss. 9-10 (<http://web2.gov.mb.ca/laws/statutes/ccsm/m255e.php>).

¹² The British Columbia Ministry of Justice explains the intent of financial disclosures, "[T]o identify what areas of influence and possible financial benefit an elected official, nominee or designated employee might have by virtue of their office, and to ensure the public has reasonable access to the information." (<http://www.ag.gov.bc.ca/financial-disclosure>).

¹³ <http://www.calgary.ca/councillors/Pages/Councillor-Disclosure-Statements.aspx>

¹⁴ http://www.nyc.gov/html/conflicts/downloads/pdf3/fd_leg_hist/leg_his_fd_1975_to_2012_wlinks.pdf.

¹⁵ <http://www.nyc.gov/html/conflicts/html/units/disclosure.shtml>.

nominated to office, assuming office, annually while holding office, and upon leaving office.¹⁶

- The City of Chicago not only requires financial disclosures, but imposes fines on late filers, publicly discloses their names, and (where applicable) may impose employment sanctions.¹⁷
- The City of Houston, Texas, requires financial disclosures as part of a candidate's application to earn a place on a ballot to be elected to municipal office.¹⁸ City officials must also make annual disclosures.¹⁹ The disclosures are considered public records and must be maintained for five years.²⁰ All such disclosures are considered to *supplement* disclosures required by state and federal law.²¹

At the provincial level of government, Ontario has been a leader in requiring elected officials to make annual disclosures of personal interests to an integrity or ethics commissioner, first introducing the mandatory disclosure statements in 1988 with the passage of the *Members' Conflict of Interest Act, 1988*.²² This practice is now required for members of the federal Parliament and all provincial legislatures.

When one considers the level of direct influence that members of Council have in relation to a wide variety of decisions, including approvals for development projects and real property interests, there is no reasonable basis for the lack of personal financial disclosure obligations for elected officials at the City of Toronto.

The Honourable Justice Denise E. Bellamy recommended that Toronto City Council consider introducing a form of financial disclosure for councillors in her 2005 report into the Toronto Computer Leasing and External Contracts Inquiries.²³

Mandatory disclosure of personal financial interests for elected officials is a well-recognized component of any developed accountable government.²⁴ Such systems provide appropriate transparency of interests held by public officials, identifying potential conflicts of interest before they arise. The disclosure system and resulting information

¹⁶ The Los Angeles Ethics Commission provides guidance to city officials at: <http://ethics.lacity.org/infofor/seifilers/index.cfm>. In addition, the California Fair Political Practices Commission provides uniform guidance to local government officials state-wide at <http://www.fppc.ca.gov/index.php?id=755>.

¹⁷ http://www.cityofchicago.org/city/en/depts/ethics/provdrs/statements_of_financialinterests/svcs/sfi.html.

¹⁸ <http://www.houstontx.gov/2013election/2013electionpacket.pdf>.

¹⁹ [http://www.houstontx.gov/2013election/\(11\)Ch18.pdf](http://www.houstontx.gov/2013election/(11)Ch18.pdf).

²⁰ *Ibid.*

²¹ <http://www.houstontx.gov/compliance/officials.html>.

²² S.O. 1988, C. 17

²³ [Report, Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry](#), by the Honourable Madam Justice Denise E. Bellamy (the Bellamy Report) at recommendation 39.

²⁴ http://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Income_and_Asset_Declarations.pdf.

can provide the public with assurance that elected officials are not susceptible to inappropriate bribes, commissions or profits. Disclosure of this information in a transparent way can help "build the trust of citizens in their government."²⁵ The disclosure system can also "provide an effective reminder to public officials of the duty to accountability that comes with public office."²⁶ Finally, public disclosure ensures that the public and oversight offices have sufficient information to exercise appropriate scrutiny over the actions of elected officials.

The lack of personal financial disclosure at the municipal level is also inconsistent with the general trend toward open government and, in particular, as it relates to other similar interests on the part of elected officials. For instance, the Code of Conduct require councillors to disclose gifts, including sponsored travel and donations to community events, the Toronto City Council has put in place policies to disclose expenses, and the *Municipal Elections Act, 1996*²⁷ provides for disclosure of campaign contributions.

It is my view that the Toronto City Council could implement a financial disclosure system through its bylaws. However, the Municipal Legislation Review presents an opportunity to set a high standard of accountability and to specifically integrate this important component into the accountability framework.

Respectfully Submitted,

Valerie Jepson
Integrity Commissioner

²⁵ *Ibid.*, at p. xi.

²⁶ *Ibid.*, at p. 1.

²⁷ S.O. 1996, C. 32, Schedule 2 (as amended 2012, C. 8, Schedule 35).

Appendix 3

November 27, 2015

Via Email and Interoffice Mail

Members of Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, ON
M5H 2N2

Dear Members of Council:

Re: *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683

In furtherance of my outreach and education duties, I am writing to bring to your attention a recent decision from the Ontario Court of Appeal interpreting the *Municipal Conflict of Interest Act* (the "MCIA"). A summary of the decision is attached to this letter. You can find the full decision online at <http://canlii.ca/t/glj17>.

The case focuses on the part of the MCIA that deems the pecuniary interest of a parent, spouse, or child to be the pecuniary interest of a member. In this case, the Court of Appeal determined that where the member's pecuniary interest is deemed to be his or her pecuniary interest because of a parent's, spouse's, or child's pecuniary interest, the insignificance or remoteness of the interest must be viewed from the member's perspective, not from the perspective of the parent, spouse or child.

In addition, when considering the matter, the Court of Appeal considered the member's motive when determining whether the interest is remote or insignificant. This appears to be a departure from previous decisions which had held that motive and intention were not relevant considerations in determining whether an interest is likely to influence the member.

Although caution is warranted, this may represent a narrowing of the scope of pecuniary interests that a member must disclose under the Act.

There has been some criticism of the case but it is significant because the judgment was issued by the Ontario Court of Appeal and is therefore binding on lower courts considering MCIA matters.

I am bringing this to your attention because it is important for you to keep up to date with current developments in the law relating to the MCI. Although I am not able to provide you with legal advice, I am available to discuss this case in general and would welcome those conversations.

I hope to continue to provide you with these kinds of updates and resources. If you have any feedback about the preferred method (e.g. hard copy or soft copy) to provide such resources to you, please let me know.

I trust that you will find the summary useful.

Yours truly,

Valerie Jepson
Integrity Commissioner

Encl. (1): November 27, 2015 Case Summary, *Ferri v. Ontario* (6 pages)

CONFLICT OF INTEREST UPDATE

Case summary *Ferri v. Ontario (Attorney General),* 2015 ONCA 683

This summary is provided to members of Council and Local Boards as part of the Integrity Commissioner's duty to provide education to elected and appointed officials at the City of Toronto. It is information about a recent court decision interpreting the *Municipal Conflict of Interest Act*. It is not a legal opinion.

Overview

In *Ferri v. Ontario* (Ferri), the Court of Appeal considered the proper analysis for determining whether a member's pecuniary interest under the *Municipal Conflict of Interest Act* (the Act)¹ is so remote or insignificant as to exempt a member from the Act's requirements.

The case appears to narrow the scope of pecuniary interests which a member is required to disclose and which preclude a member from participating in a related public matter.

The Court of Appeal held that:

- 1) Where the member's pecuniary interest is deemed to be his or her pecuniary interest because of a parent's, spouse's, or child's pecuniary interest, the insignificance or remoteness of the interest must be viewed from the member's perspective, not from the perspective of the parent, spouse or child.
- 2) The member's motive is relevant in determining whether the interest is remote or insignificant. This is a departure from previous decisions which had held that motive and intention were not relevant considerations in determining whether an interest is likely to influence the member.

¹ R.S.O. 1990, c. M.50.

Refresher: the *Municipal Conflict of Interest Act*

The Act applies to the conduct of “members”, which includes a “member of council or of a local board”. The Act regulates the participation of members of municipal councils or local boards in matters in which they may have a pecuniary interest. Pecuniary interest is not defined in the Act, but has been interpreted by courts to mean “a financial, monetary, or economic interest”.²

Section 5 of the Act requires members to disclose their pecuniary interests and prohibits members from participating in public matters that affect their pecuniary interests, including members’ deemed pecuniary interests (discussed in greater detail below).

Courts consider the Act’s purpose in interpreting the statute, including which pecuniary interests must be disclosed and preclude a member from participating in a matter. The seminal statement of the Act’s purpose is from a 1979 Divisional Court case, *Moll v. Fisher*:

This enactment, like all conflict of interest rules, is based on the moral principle, long embodied in our jurisprudence, that no man can serve two masters. It recognizes the fact that the judgment of even the most well-meaning men and women may be impaired when their personal financial interests are affected. Public office is a trust conferred by public authority for public purpose. And the Act, by its broad proscription, enjoins holders of public offices within its ambit from any participation in matters in which their economic self-interest may be in conflict with their public duty. The public’s confidence in its elected representatives demands no less.³

The Act contains a number of provisions which are relevant to the scope of a councillor’s pecuniary interest. First, s. 2 provides that a “pecuniary interest” includes not only a direct pecuniary interest (*i.e.* the member’s own interest), but also an indirect one. Relevant to *Ferri*, the Act states:

Indirect pecuniary interest

2. For the purposes of this Act, a member has an indirect pecuniary interest in any matter in which the council or local board, as the case may be, is concerned, if,

...

² *Ferri v. Ontario (Attorney General)*, 2015 ONCA 683, at para. 9, citing *Mondoux v. Tuchenhausen*, 2011 ONSCD 5398 (CanLii), 107 O.R. (3d) 675 (Div. Ct.), at para 31; *Magder v. Ford*, 2013 ONSC 263 (CanLii), 113 O.r. (3d) 241 (Div. Ct.), at para, 6, leave to appeal to S.C.C. refused, 326 O.A.C. 400 (note).

³ *Moll v. Fisher*, (1979), 23 O.R. (2d) 609 at paras. 5-7.

(b) the member is a partner of a person or is in the employment of a person or body that has a pecuniary interest in the matter.

Section 3 deems that the pecuniary interest of a member's parent, spouse, or child is the pecuniary interest of a member:

Interest of certain persons deemed that of member

3. For the purposes of this Act, the pecuniary interest, direct or indirect, of a parent or the spouse or any child of the member shall, if known to the member, be deemed to be also the pecuniary interest of the member.

Therefore, by operation of ss. 2 and 3, the indirect pecuniary interest of a spouse, parent or child is also deemed to be a pecuniary interest of the councillor and is an interest which must be disclosed under s. 5.

However, s. 4 provides that the disclosure and other requirements of the Act will not apply to the pecuniary interest of a member in a number of circumstances. Of relevance to *Ferri* is that s. 5 does not apply to a pecuniary interest where the interest is shown to be so remote or insignificant that it cannot be reasonably regarded as likely to influence a member:

Where s. 5 does not apply

4. Section 5 does not apply to a pecuniary interest in any matter that a member may have,

...

(k) by reason only of an interest of the member which is so remote or insignificant in its nature that it cannot reasonably be regarded as likely to influence the member. [Emphasis added.]

The Facts in *Ferri*

Mario Ferri, a City Councillor for the City of Vaughan, brought an application seeking a declaration that he did not have a pecuniary interest which precluded him from participating in a public matter within the meaning of the Act. In other words, Councillor Ferri proactively asked the Court to determine whether or not he had an interest *before* any vote in which he might have to declare an interest and be precluded from participating.

The potential conflict arose out of the Vaughan Official Plan 2010 (the "Plan"). On the one hand, Vaughan City Council, of which Mario Ferri was a member, had adopted the Plan. On the other hand, a Vaughan citizen appealed an aspect of the Plan to the Ontario Municipal Board ("OMB") and retained a law firm at which Mario Ferri's son, Steven Ferri, practiced as a lawyer, to act on the appeal.

Mario Ferri still wished to participate in matters related to the OMB appeal in his capacity as a councillor, and took the unusual step of seeking a court decision declaring that he did not have a pecuniary interest within the meaning of the Act, which would allow him to participate in Vaughan City Council decisions involving the OMB appeal. Since Councillor Ferri brought this application on his own, the matter was unopposed throughout the proceeding.

Councillor Ferri was unsuccessful at the lower court (the Superior Court) but successful at the Ontario Court of Appeal. Both decisions are summarized below.

Decision of the Superior Court

The lower court dismissed Mario Ferri's application and held that he had a pecuniary interest in the OMB appeal by virtue of his son's indirect pecuniary interest, and that this interest was neither remote nor insignificant under s. 4(k) of the Act.

Analysis of remoteness/insignificance of a deemed pecuniary interest

Councillor Ferri conceded that Steven Ferri had an indirect pecuniary interest in the outcome of the OMB Appeal. By operation of s. 3, Steven Ferri's indirect pecuniary interest was deemed to be the councillor's interest.

The lower court then held that the exemption in s. 4(k) did not apply to Councillor Ferri's deemed pecuniary interest. The Court reasoned that Councillor Ferri was deemed to have the same pecuniary interest as Steven Ferri for all purposes under the Act. Where the deemed interest is proximate and significant to the member's child, then the member's deemed interest is also deemed to be proximate and significant:

In analysing the exemption in s. 4(k) the court must consider two distinct interests: the interests of the child and the interests of the member. The starting premise of the legislation is that the interests are deemed identical. If the interest of the child is "remote or insignificant", then so too is the deemed interest of the member. If the interest of the child is proximate and significant, then, unless there is some reason to conclude otherwise, so too is the deemed interest of the member. It is possible, however, that the child's proximate and significant interest transforms into a remote and insignificant interest for the member, and could still qualify for the s. 4(k) exception. [Emphasis added.]

The lower court then held that from Steven Ferri's perspective, his pecuniary interest was not so remote or insignificant that it could not reasonably be regarded as unlikely to influence him because he would benefit financially from a successful OMB appeal and from advocating the appellant's position.

Motive

Councillor Ferri also asked the Court to consider his motives in wanting to participate in Council decisions relating to the Plan and the OMB Appeal. The lower court concluded that evidence of Councillor Ferri's motives, good faith and propriety in wanting to participate in the OMB appeal were not relevant considerations in determining whether there was a conflict of interest.

The Court of Appeal Decision

Councillor Ferri appealed the Superior Court's decision to the Court of Appeal. The Court allowed the appeal and concluded that Councillor Ferri's pecuniary interest was so remote or insignificant that it was unlikely to influence him.

Analysis of remoteness/insignificance of a deemed pecuniary interest

The Court of Appeal rejected the lower court's holding that a member's interests were deemed to be identical to his child's interests for all purposes under the Act. Rather, the Court concluded that the determination of remoteness and insignificance in the case of a deemed pecuniary interest must be undertaken entirely from the member's perspective. The member is not "fixed with the same level of proximity and significance as his child." The analysis begins afresh and focuses instead on the "proximity and significance of the councillor's pecuniary interest in the context of all the circumstances".

Motive and good faith are relevant

Second, the Court concluded that the member's motive was properly considered in the remoteness or insignificance analysis. The Court of Appeal adopted the following test for determining whether a pecuniary interest was remote or insignificant under s. 4(k):

Would a reasonable elector, being apprised of all the circumstances, be more likely than not to regard the interest of the councillor as likely to influence that councillor's action and decision on the question?

The Court emphasized that the test requires courts to consider all the circumstances.

In concluding that motive was properly considered as one of these circumstances, the Court of Appeal distinguished an earlier, seminal case, *Moll v. Fisher* on the basis that *Moll v. Fisher* dealt with a different, earlier version of the Act which had provided that motive was a mitigating factor in determining penal consequences as opposed to liability. The Court reasoned that the current version of the legislation provides that "good faith and motive are relevant to the question of whether a pecuniary interest is likely to influence the councillor", and this analysis "lies at the heart of the analysis of whether a pecuniary interest is remote or insignificant under s. 4(k)."

Application of the relevant factors in this case

The Court then applied the “reasonable elector” test to the facts of this case.

The Court identified the following circumstances, including motive, as relevant to determining that Mario Ferri’s interest was so remote or insignificant that it could not reasonably be regarded as likely to influence the member:

- Mario Ferri has many years of faithful service to the municipality;
- Mario Ferri was acting in good faith and his motivation to participate in issues related to the Plan are not motivated by potential pecuniary benefit;
- . . .
- Mario Ferri has been extremely vigilant and conscientious in declaring conflicts of interest under the MCI A;
- The matters related to the Plan are of major public interest to his constituents;
- Mario Ferri receives no benefit from his son’s compensation; and,
- Steven Ferri’s compensation and employment do not depend on the outcome of the OMB Appeal or any decision of council respecting these matters.

A Caution

The holding that motive and intention are relevant factors in determining whether a pecuniary interest is remote or insignificant is a departure from previous cases. For instance, in *Baillargeon v. Carroll*,⁴ the Divisional Court concluded that it did not matter whether or not a councillor intended to obtain any pecuniary benefit. The court reasoned that the inquiry is objective, and focuses on the member’s actions viewed objectively, not the member’s intention. In *Ferri*, the Court of Appeal did not specifically consider *Baillargeon* or other cases which had reached the same conclusion. Those cases were decided under versions of the Act which contain the same scheme which is currently in force, and not the former scheme in force at the time *Moll v. Fisher* was decided.

Note: This case summary is provided as information for members of Council and Local Boards. It is not a legal opinion.

⁴ 2009 CarswellOnt633 (Sup. Ct.). See also *Magder v. Ford*, 2013 ONSC 263, at paras. 75-76; *Jafine v. Mortson* (1999), 43 O.R. (3d) 81 (Ont. Gen. Div.).

December 14, 2015

Via Email and Interoffice Mail

Members of Council
City of Toronto
Toronto City Hall
100 Queen Street West
Toronto, ON
M5H 2N2

Dear Members of Council:

Re: Toronto Public Service Bylaw and the Role of Council Members

On December 31, 2015, the Toronto Public Service Bylaw (the "TPS Bylaw") will come into force, a significant milestone for the City of Toronto. The TPS Bylaw reinforces the professionalism and neutrality of the Toronto public service and is an important companion to the *Code of Conduct for Members of Council* (the "*Code of Conduct*" or the "*Code*").

I am writing to you to at this time as a part of my education and outreach responsibilities to draw attention to the TPS Bylaw and why it has important implications for you as a Member of Council.

One of the purposes of the TPS Bylaw is to "advance the public service as a professional body that is objective, impartial and ethical, with consistent public service requirements." It clarifies and confirms that the public service has the following values:

- To serve the public well;
- To serve Council and/or their Board well;
- To act with integrity;
- To maintain political neutrality;
- To uphold Toronto's motto - Diversity Is Our Strength;
- To use City property, services and resources responsibly;
- To apply judgement and discretion; and
- To serve the public service well.

The *Code of Conduct* (Article XII) outlines the following principles and standards for how Members of Council interact with the public service:

- Public servants serve Council as a whole and the combined interests of all Members as evidenced through the decisions of Council.
- Members of Council must be respectful of the role of public servants to provide advice based on political neutrality and objectivity and without undue influence from any individual Member or faction of Council.
- Members of Council are responsible for preserving public trust and confidence in the integrity of the public service and for supporting a public servant's responsibility to provide professional and frank advice.

Your Actions Impact on the Public's Trust and Confidence in the Public Service

As a Member of Council you have a role to play toward enhancing and strengthening the public's trust and confidence in the public service. You advance this important objective when you act in accordance with the standards set out in the *Code* and with mindful attention to the core values of the public service.

With every interaction you have with public servants, I encourage you to demonstrate your understanding of the distinct roles that Council and the public service have. In practical terms, this means that you should:

- Always act with respect and courtesy when interacting with members of the public service.
- Remember that the public service is politically neutral and be careful not to treat public servants as political adversaries. This means ensuring that neither your actions nor your statements give the impression that public servants have a political position in a decision before Council.
- Be aware of and respect protocols and decision-making structures within City divisions and boards.

I have observed a very strong culture among Members of Council of respecting staff's advice and professionalism. The suggestions set out above are derived from the very best practices that I have observed.

I hope that you will take some time over the upcoming holiday season to review the important principles of the TPS Bylaw and your *Code of Conduct* obligations. Should you wish to discuss any of these issues, I am available to you.

Best wishes for a happy and restful holiday season.

Yours truly,

Valerie Jepson
Integrity Commissioner

Appendix 4

Appendix 4



City of Toronto
Integrity Commissioner Office Expense Budget
Actuals January - December 2015
Charged to Cost Centre IG0001

OFFICE OF THE INTEGRITY COMMISSIONER

Cost Element	Cost Element Name	January '15 Actuals	February '15 Actuals	March '15 Actuals	April '15 Actuals	May '15 Actuals	June '15 Actuals	July '15 Actuals	August '15 Actuals	September '15 Actuals	October '15 Actuals	November '15 Actuals	December '15 Actuals	January - December '15 Totals
		\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
	1015 Full Time Regular Pay	4,153.51	16,730.36	26,399.98	20,923.06	21,994.45	21,268.86	21,268.86	21,268.86	35,226.35	23,115.00	23,115.00	46,993.50	282,457.79
	1050 Permanent - Vacation Pay		(415.27)							1,838.76				1,423.49
	1555 Separation - Salary										6,038.46			6,038.46
	1711 Comprehensive Medical	84.12	312.34	491.09	398.56	398.56	398.56	398.56	398.56	458.25	283.60	283.60	736.74	4,642.54
	1712 Dental Plan	46.46	175.89	275.65	221.02	221.02	221.02	221.02	221.02	258.45	160.84	160.84	409.19	2,592.42
	1720 Long Term Disability	78.23	428.08	730.18	582.18	627.36	591.80	591.80	591.80	700.58	437.70	437.70	1,118.54	6,915.95
	1730 Group Life Insurance	31.01	124.89	195.87	156.16	168.23	158.72	158.72	158.72	187.90	117.40	117.40	300.01	1,875.03
	1740 Employment Insurance	264.44	566.93	694.86	233.79	131.20	145.76	145.76	145.76	354.54	194.38	194.38	354.72	3,426.52
	1745 EI Rebate	1.49	9.75											11.24
	1750 Ontario Health Tax	204.07	439.82	402.01	411.04	431.95	417.84	417.84	417.84	726.45	453.04	453.04	921.70	5,696.64
	1760 Canada Pension Plan	376.95	753.90	1,283.19	481.13	235.46	262.88	262.88	262.88	640.69	352.22	352.22	634.90	5,899.30
	1770 Pension Plan (OMERS)			341.99	583.76	502.90	583.76	583.76	583.76	150.60			1,116.31	4,446.84
	1903 Separation - Benefit										370.60			370.60
	Total Salaries and Benefits	5,240.28	19,126.69	30,814.82	23,990.70	24,711.13	24,049.20	24,049.20	24,049.20	40,542.57	31,523.24	25,114.18	52,585.61	325,796.82
	2010 Stationery			25.96	93.77		15.90		46.85					182.48
	2020 Books & Magazines													-
	2040 Photocopy Charges (Internal)			72.23						37.14				109.37
	2099 Miscellaneous Office Supplies													-
	2650 Computer and Printer Supplies													-
	2999 Miscellaneous Materials													-
	3310 Furnishings							1,635.79	84.28				824.94	2,545.01
	3410 Computers - Hardware												950.89	950.89
	3420 Computers - Software					315.59						479.88	437.16	1,232.63
	4010 Professional Services - Legal			469.62			931.36	1,068.48	12,590.25	2,917.03	2,372.03	1,024.21	4,039.88	25,412.86
	4086 Translation & Interpreters													-
	4122 Transcripts													-
	4130 Process Server Fees											86.50		86.50
	4132 Conduct Money									318.00		106.00	159.00	583.00
	4144 Investigative Expense													-
	4199 Other Professional & Technical Services													-
	4225 Business Travel - Public Transit													-
	4252 Conference/Seminar - Accommodation													-
	4253 Conference/Seminar - Air/Rail/Bus Travel													-
	4254 Conference/Seminar - Ground Transportation													-
	4256 Conference/Seminar - Registration Fee												366.33	366.33
	4410 Contracted Services - Electrical								656.35					656.35
	4414 Advertising & Promotion													-
	4415 Janitorial													-
	4416 Transfer, Haulage & Storage							313.01	544.42					857.43
	4452 Transportation - Taxis											63.03		63.03
	4472 Computer Hardware Maintenance - RSA Token													-
	4473 Managed Print Charges												135.76	135.76
	4770 Parking													-
	4775 Kilometrage													-
	4805 Postage													-
	4808 Network Cabling										189.68			189.68
	4810 Telephone													-
	4811 Cellular Phones			151.87		50.42	50.42	50.42	50.42	109.39		52.66	100.94	616.54
	4815 Courier Services													-
	4820 Business Meetings							390.11		28.76				418.87
	4822 Receptions & Public Relations													-
	4825 Printing & Reproduction - External													-
	4985 Cash Over/Under									0.02				0.02
	4995 Other Expenses								163.08					163.08
	6031 Contribution - Insurance Reserve Fund							4,365.48						4,365.48
	6570 Bank Service Charges													-
	7025 IDC - Postage & Courier													-
	7030 IDC - Printing												5.57	5.57
	7035 IDC - Photocopying													-
	7130 IDC - User Hardware & Operational Syst Support													-
	9451 Trade A/P Discounts Received													-
	Total Office Expenditures	\$ -	\$ -	\$ 719.68	\$ 93.77	\$ 366.01	\$ 5,753.27	\$ 3,067.70	\$ 14,135.65	\$ 3,410.34	\$ 2,561.71	\$ 1,812.28	\$ 7,020.47	\$ 38,940.88
	Total Monthly Expenditures	\$ 5,240.28	\$ 19,126.69	\$ 31,534.50	\$ 24,084.47	\$ 25,077.14	\$ 29,802.47	\$ 27,116.90	\$ 38,184.85	\$ 43,952.91	\$ 34,084.95	\$ 26,926.46	\$ 59,606.08	\$ 364,737.70

Note: Figures are subject to change.