



## Chapter 3 Amendments - Enhanced Authorities of Integrity Commissioner as a Result of Bill 68

**Date:** January 8, 2019  
**To:** Executive Committee  
**From:** City Manager  
**Wards:** All

### SUMMARY

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This report seeks amendments to Toronto Municipal Code Chapter 3, Accountability Officers, to respond in part to changes to the authority of the City of Toronto's Integrity Commissioner as a result of Bill 68, *Modernizing Ontario's Municipal Legislation Act, 2017*, which received royal assent May 30, 2017.

The section of Bill 68 which amends the *City of Toronto Act* and expands the role of the Integrity Commissioner (IC) will come into effect on March 1, 2019. The recommended amendments to Chapter 3 in this report are necessary to reflect the additional responsibilities of the IC to:

- advise on matters related to the *Municipal Conflict of Interest Act*, and
- investigate and bring applications to Court regarding allegations of failure to comply with the *Municipal Conflict of Interest Act*.

Other recommendations in this report confirm the authority of the Integrity Commissioner to establish policies and procedures for complaints within her Office mandate to preserve the independence of the Integrity Commissioner.

### RECOMMENDATIONS

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The City Manager recommends that:

1. City Council amend Chapter 3, Accountability Officers, Toronto Municipal Code as follows:
  - a. by deleting references to the Complaint Protocol;
  - b. to provide that the Integrity Commissioner may issue public reports without reporting to Council, in accordance with Article V of the *City of Toronto Act, 2006*;

c. to reflect new authority of the Integrity Commissioner to provide advice on the application of the *Municipal Conflict of Interest Act*.

d. to reflect new authority of the Integrity Commissioner to conduct inquiries on whether a member of Council or local board (restricted definition) has contravened the *Municipal Conflict of Interest Act*.

e. to clarify the Integrity Commissioner's responsibilities to carry out other duties mandated by City policies, including the Human Rights and Anti-Harassment/Discrimination Policy.

f. to expand the responsibility of the Integrity Commissioner to provide educational programs to members of Council, local boards (restricted definition) and their staff on the *Municipal Conflict of Interest Act*.

g. to expand the authority of the Integrity Commissioner to bring applications to Court pursuant to section 8 of the *Municipal Conflict of Interest Act*, and

h. by adding the following new Section, headed "Complaint Procedures":

A. The Integrity Commissioner is responsible for establishing procedures for:

(1) formal requests for investigations and informal complaints about possible contraventions of the Code of Conduct; and

(2) applications pursuant to section 160.1 of the Act.

B. The Integrity Commissioner shall not participate in an informal complaint about possible contraventions of the Code of Conduct during the election period described in sub-sections 160(7) - (9) of the Act.

C. The Integrity Commissioner may attempt to settle any matter at any stage.

D. The Integrity Commissioner shall not conduct an investigation if they are of the opinion that, or where it becomes apparent in the course of the investigation that, a request to investigate is frivolous, vexatious, not made in good faith or that there are insufficient or no grounds for an investigation

E. The Integrity Commissioner may refuse to conduct, or terminate, an investigation in the following circumstances:

(1) There has been a substantial delay between the request and the incidents that are the subject matter of the complaint, and because of the delay the inquiry would serve no useful purpose; or

(2) The Integrity Commissioner is of the opinion that the inquiry would serve no useful purpose.

F. The Integrity Commissioner shall not issue a report finding a violation of the Code of Conduct on the part of any member unless the member of Council or local board (restricted definition) has had notice of the basis for the proposed finding and any recommended sanction or remedial action, and an opportunity either in person or in writing to comment on the proposed findings and any recommended sanction or remedial action.

G. The Integrity Commissioner shall provide a report to the complainant and the member at the conclusion of the investigation.

H. Notwithstanding the Integrity Commissioner's general reporting authority and discretion set out in this Chapter, where the complaint is sustained in whole or in part, the Integrity Commissioner shall provide a report to Council outlining the findings, the terms of any settlement, or recommended penalty or remedial action.

I. Council or a local board (restricted definition) shall consider and respond to any report filed by the Integrity Commissioner that recommends a penalty or remedial action as its first opportunity. In responding to such a report, Council or a local board (restricted definition) may vary a recommendation that it impose a penalty or remedial action but shall not refer the matter other than back to the Integrity Commissioner.

J. The Integrity Commissioner shall state in a report and recommend that no penalty or remedial action be imposed if the Integrity Commissioner determines that:

- (1) there has been no contravention of the Code of Conduct;
- (2) a contravention occurred although the member took all reasonable measures to prevent it; or
- (3) a contravention occurred that was trivial or committed through inadvertence or an error in judgement made in good faith.

## **FINANCIAL IMPACT**

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This report recommends amendments to Toronto Municipal Code Chapter 3, Accountability Officers, to reflect expanded authority of the Integrity Commissioner as a result of changes to the City of Toronto Act in Bill 68. Adopting these recommendations will not have a financial impact. However, in accordance with the Accountability Officers' Budget Protocol, the Integrity Commissioner will report to the Budget Committee with recommendations regarding the Office's budget.

The Chief Financial Officer and Treasurer has reviewed this report and agrees with the financial impact information.

## DECISION HISTORY

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On May 22, 2018, City Council adopted EX34.11 "Report on Outstanding Matters Related to City's Accountability Offices", in response to EX10.3, "Review of the Functions of Toronto's Accountability Offices" which was adopted with amendments by City Council at its meeting of December 9, 2015. EX34.11 noted the upcoming changes to the responsibilities of the City's Integrity Commissioner as a result of Bill 68.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.EX10.3>

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.EX34.11>

At its meeting on January 31, 2017, City Council adopted EX21.3 "Bill 68, Modernizing Ontario's Municipal Legislation Act, 2016 - Implications for the City of Toronto" wherein Council expressed support to the Province with respect to Bill 68 and acknowledged the consultative approach followed by the Province in developing the legislation.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX21.3>

## COMMENTS

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### Toronto's Integrity Commissioner

The *City of Toronto Act, 2006* (COTA) requires the City to appoint an Integrity Commissioner (IC). Toronto City Council established the functions for an IC in 2004. As with all of the City's Accountability Officers, the IC has a unique mandate and responsibility codified in Toronto's Municipal Code Chapter 3, Accountability Officers. Chapter 3 also sets out the Officers' term length and policy-governance framework including independence, confidentiality and accountability directly to City Council.

The IC carries out three core functions:

- **Advisory Role** - providing confidential written and oral advice to members of City Council and local boards (restricted definition) with respect to the applicable Code of Conduct, including other by-laws and policies governing ethical behaviour, including general advice about the *Municipal Conflict of Interest Act* (MCIA).
- **Investigative Role** - receiving and investigating complaints to determine whether a member of City Council or local board (restricted definition) contravened a Code of Conduct.
- **Educational Role** - Providing educational programs to members of City Council and their staff.

Beginning March 1, 2019, the Integrity Commissioner's authority will expand as a result of changes made to provincial legislation in Bill 68, *Modernizing Ontario Municipal Legislation Act, 2017*.

### **Bill 68, *Modernizing Ontario Municipal Legislation Act, 2017***

Bill 68, *Modernizing Ontario Municipal Legislation Act, 2017* received Royal Assent on May 30, 2017.

Currently, the IC is limited to providing general advice on the MCIA, and not on specific individual cases. When the amendments to the *City of Toronto Act* under Bill 68 come into effect, March 1, 2019, the IC's role with respect to the MCIA will change to:

- require the IC to advise on matters related to the MCIA, and
- authorize the IC to investigate and bring applications to Court regarding allegations of failure to comply with the MCIA.

The impact that these legislative amendments will have on the office budget of the IC is unknown. Staff, in consultation with the IC, will monitor any impacts, for example reimbursement of costs noted below, and report back to City Council with recommendations on resource requirements as necessary and appropriate.

### ***Amendments to Chapter 3***

Chapter 3 of the Municipal Code sets out the responsibilities of the IC. This report recommends amendments to Chapter 3 to reflect the changes to the mandate and responsibilities of the IC resulting from amendments to provincial legislation including:

- providing advice on individual cases under the MCIA;
- conducting inquiries on whether a member of Council or a local board (restricted definition) has contravened the MCIA;
- providing educational programs to members of Council and local boards (restricted definition) on the MCIA; and
- bringing applications to Court pursuant to section 8 of the MCIA.

Currently under the MCIA, a person must apply to the Courts to determine whether a member of City Council or a local board (restricted definition) has contravened the legislation. Members of City Council or local board who are the subject of the complaint can only get advice on their specific case from their own legal counsel. Once these changes come into effect, complainants will have the option of filing a complaint with the IC instead of the Courts, and members will be able to seek advice on their individual circumstances from the IC.

### **Complaint Protocol and Procedures**

The IC is responsible for hearing and investigating complaints against members of Council and local boards (restricted definition), and overseeing protocols and procedures for both informal and formal complaints.

The current complaint procedures were adopted by City Council in 2004. This was in part because the office was new and the IC at the time was functioning on a part-time basis.

As with the other City Accountability Offices, the office of the IC has matured and established practices, procedures and protocols to support its mandate. One of the fundamental tenets of the Accountability Offices is independence from both City Council and the City's administration. The *City of Toronto Act* requires that the IC perform his or her functions in an independent manner.

Although Council sets minimum expectations set out in the by-law, such as the requirement to have written policies and procedural obligations such as reporting to Council when there are breaches, the manner in which an investigation is undertaken should be fully within the discretion of the IC. The amendments proposed strengthen and clarify the limits of the Integrity Commissioner's jurisdiction, including over untimely complaints.

The recommended amendments to Chapter 3 in this report confirm that it is appropriately within the IC's mandate to independently establish procedures for receiving and addressing informal and formal complaints. This would also be consistent with the other Accountability Offices, wherein the complaint procedures and other processes are developed by the respective Accountability Officer. Additionally, complaint procedures developed independently by the IC will allow for greater flexibility to amend the procedures based on feedback received.

The current Complaint Protocol (informal and formal) will be replaced by the recommendations in this report. Specific procedures for the intake and handling of informal and formal complaints are recommended to be developed independently by the Integrity Commissioner.

### **Reimbursement of Costs**

Since the impacts of the IC's expanded authority in terms of volume and nature of complaints won't be known for some time after the legislative changes come into effect, staff will monitor these impacts and report back to City Council if further changes are deemed to be necessary. For example, currently, members of Council and local boards (restricted definition) who are subjects of a complaint, can seek reimbursement of legal costs if an investigation by the IC determined that they did not violate a Code of Conduct. Presently, members are not eligible for reimbursement of legal costs with respect to MCIA matters. Staff will review the impact of the expansion of the IC's responsibilities to include conducting inquiries on whether a member has violated the MCIA.

### **CONTACT**

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### **SIGNATURE**

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