

Review of Codes of Conduct for Members of Council, Local Boards and Adjudicative Boards

Date: March 16, 2021

To: Executive Committee

From: Jonathan Batty, Integrity Commissioner

Wards: All

SUMMARY

The Integrity Commissioner is mandated to provide advice on policy matters dealing with issues of ethics and integrity under the City of Toronto Act, 2006 and Chapter 3 of the Toronto Municipal Code.

The Code of Conduct for Members of Council (the “Code of Conduct”) is the embodiment of the ethical principles and rules of conduct which Council has decided its members are required to observe. In addition to the Code of Conduct, the Municipal Conflict of Interest Act (“MCI Act”) sets out rules regarding pecuniary interests. The City of Toronto Act, 2006 and Chapter 3 of the Toronto Municipal Code set out many of the operational procedures relating to these rules. Collectively, these documents define the ethical framework governing members of Council.

Council adopted the Code of Conduct in 2008. It has not been substantively reviewed and updated since then. It was adopted following a judicial inquiry conducted by Justice Denise Bellamy that investigated serious conflicts of interests, abuses of power and financial maladministration following the amalgamation of the City of Toronto. Justice Bellamy recommended that the City’s codes of conduct should go beyond the minimum standards of behaviour and set out the highest ideals and values for all public servants. She also specifically recommended that Council be vigilant in reviewing and updating the City’s codes of conduct.

The 2019 Annual Report from the Integrity Commissioner recommended that the Code of Conduct be reviewed and updated. Since that recommendation was made:

- The Government of Ontario has announced consultations, and a private members bill amending the City of Toronto Act, 2006 has been introduced, to specifically address workplace harassment and discrimination committed by members of Council.

- The Collingwood Judicial Inquiry recommended in November 2020 that municipal codes of conduct across Ontario, and related provincial legislation, be updated to improve transparency in local government.

The Integrity Commissioner recommends that Council request the Integrity Commissioner (in consultation with the City Clerk, City Manager and City Solicitor) to review, consult and report back to Council with proposed changes to the Code of Conduct and related legislation. As their provisions are mostly identical, the Codes of Conduct for local boards (restricted definition) and adjudicative tribunals need to be included in this review.

RECOMMENDATIONS

The Integrity Commissioner recommends that:

1. City Council request the Integrity Commissioner to individually consult with members of Council regarding potential changes to the Codes of Conduct, the City of Toronto Act, 2006, Chapter 3 of the Toronto Municipal Code and the MCIA and report back to Council with a range of options for their consideration including, but not limited to, recommendations addressing workplace harassment and discrimination and other conduct-related issues.
2. City Council request the Integrity Commissioner to conduct, with the advice of the City Manager, public and stakeholder consultations about potential changes to the Codes of Conduct, the City of Toronto Act, 2006, Chapter 3 of the Toronto Municipal Code and the MCIA and report back with these findings when making final recommendations to Council.
3. With respect to these matters, City Council request the Integrity Commissioner to:
 - a. Report back directly to City Council, on an interim basis, as needed in the opinion of the Integrity Commissioner;
 - b. Report back directly to City Council with recommendations no later than January 2022; and
 - c. Prior to any reports being submitted to City Council, to consult with the City Clerk, City Manager and City Solicitor.

FINANCIAL IMPACT

The proposed actions can be completed within the approved 2021 operating budget.

DECISION HISTORY

None.

COMMENTS

Workplace Harassment and Discrimination: Provincial Consultations and Proposed Legislation

Workplace harassment and discrimination is contrary to the City's Codes of Conduct. However, the penalties and remedial actions and measures that Council may apply to Councillor and board member misconduct are set out in the City of Toronto Act, 2006 and, in comparison to other workplace environments, are limited.

Article XIV (Discreditable Conduct) of the Code of Conduct sets out that the City's Human Rights and Anti-harassment Policy ("HRAP") applies to members of Council in their treatment of the public, other members and staff. HRAP also applies to staff in members' offices. The City has a comprehensive discipline process for employees but it does not govern members. Rather, the City of Toronto Act, 2006 requires these matters be investigated by the Integrity Commissioner and reported to Council, which is limited to imposing as a penalty a reprimand or a suspension of pay for up to 90 days.

Recently, the integrity commissioners for the City of Ottawa¹ and the City of Brampton² have investigated and reported on complaints about a member of council found to have sexually harassed others. In considering those reports, those councils observed there is a legislative gap as the range of penalties at their disposal were inadequate.

In February 2021, the Association of Municipalities of Ontario ("AMO") was consulted by the Honourable Steve Clark, Minister of Municipal Affairs and Housing, who sought advice about whether legislation could be enacted that would permit members of council to be removed from office by ministerial order, or a recall procedure, if found to have harassed or discriminated against someone in the workplace.³ AMO, in response, has recommended that removal from office should be a decision of a judge on the basis of an application brought by an integrity commissioner.

On March 5, 2021, the Government of Ontario announced it would be launching consultations with "municipal officials" to obtain input about how to strengthen accountability measures to ensure that members of council maintain a safe and respectful workplace.⁴ Those consultations will be led by Associate Minister of Children and Women's Issues, the Honourable Jill Dunlop.

¹ Reports to Council Respecting the Conduct of Councillor Chiarelli (July 15 and November 25, 2020) <https://app05.ottawa.ca/sirepub/mtgviewer.aspx?meetid=8119&doctype=agenda&itemid=401030>, <https://app05.ottawa.ca/sirepub/mtgviewer.aspx?meetid=7867&doctype=agenda&itemid=405532>

² Integrity Commissioner Report 2020-03 (Brampton City Council) https://www.brampton.ca/EN/City-Hall/IntegrityCommissionerReports/2020-03%20-%20IC%20Report%20including%20Appendicies_FINAL.pdf

³ Letter from AMO to Minister Clark (February 3, 2021)

<https://www.amo.on.ca/sites/default/files/assets/DOCUMENTS/Letters/2021/OptionsforEnforcingCompliancebyCouncilMemberswithMunicipalCodesofConductAMOLtr20210203.pdf>

⁴ Government of Ontario, Ministry of Municipal Affairs and Housing. (March 5, 2021) Ontario Launches Consultation to Strengthen Municipal Codes of Conduct. News Release.

<https://news.ontario.ca/en/release/60589/ontario-launching-consultation-to-strengthen-municipal-codes-of-conduct>

On March 8, 2021, a private member's bill, Bill 260, Stopping Harassment and Abuse by Local Leaders Act, 2021, was introduced and received first reading in the Legislative Assembly. It proposes to amend the Municipal Act, 2001 and the City of Toronto Act, 2006 to establish a process where council could direct an integrity commissioner to apply to a judge to request the removal from office of a member found to have harassed or discriminated against someone in the workplace.⁵

On March 12, 2021, the Integrity Commissioner wrote to Minister Dunlop to obtain information about:

- 1) The legislative and other options the Ministry is considering and seeking input on;
- 2) Who will have an opportunity to provide input on the Ministry's options and suggest other solutions;
- 3) The schedule for the consultation and introduction of legislation; and,
- 4) The provincial government's views with respect to the provisions in Bill 260, Stopping Harassment and Abuse by Local Leaders Act, 2021.

The limitations Council faces in addressing this issue is a matter of active public debate and is before the Legislative Assembly. As it is proposed that the City of Toronto Act, 2006 be amended, Council needs to consider how this legislative gap be addressed.

Collingwood Judicial Inquiry Recommendations

On November 2, 2020, a report containing over 300 recommendations was released by a judicial inquiry appointed at the request of Council for the Town of Collingwood.⁶ Among other things, the Collingwood Inquiry examined the serious conflicts of interest the former mayor, her lobbyist brother and a friend (who was a town employee concurrently holding four separate, senior roles) had in relation to the town's sale of a 50 percent interest in its public utility and construction of two municipal sports facilities. Many of the recommendations are addressed to all Ontario municipal councils, not just Collingwood's Council. Some of the recommendations propose the MCIA and provisions in the Municipal Act, 2001 (identical to those in the City of Toronto Act, 2006) be amended.

The Collingwood Inquiry has made significant recommendations. Associate Chief Justice Marrocco's recommendations join those of Justice Bellamy for the City of Toronto in 2005 and Associate Chief Justice Cunningham for the City of Mississauga in 2011, to form a trilogy of comprehensive recommendations for maintaining a high standard of ethical conduct in government. If not already addressed, Council needs to act on these recommendations.

Council should note that many of Justice Marrocco's recommendations propose policies already in place in Toronto. His report cites the testimony of many current and former officials of the City of Toronto, including the previous Integrity Commissioner.

⁵ <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-260>

⁶ Associate Chief Justice Frank N. Marrocco, Transparency and the Public Trust: Report of the Collingwood Judicial Inquiry <https://www.collingwoodinquiry.ca/>

Justice Marrocco made recommendations about codes of conduct that Council needs to consider in order to maintain the highest standards of conduct. Those recommendations include:

- Clarifying and updating the rules about conflicts of interests
- Clarifying the rules for receiving gifts and attending charity events
- Regularly reviewing the Code of Conduct

To give effect to the recommended changes to codes of conduct, Justice Marrocco also recommended amendments to the MCIA and provisions in the Municipal Act, 2001 (identical to those in the City of Toronto Act, 2006) that include:

- Expanding the definition of family for purposes of determining pecuniary interests
- Clarifying the rules around what constitutes a conflict of interest
- Annual financial disclosure and reporting to an integrity commissioner by members of Council similar to the requirements governing MPP's
- Expanding the penalties for breaching a code of conduct (at present only reprimand and suspension of pay) to include: oral/written apologies; return of property; reimbursement; and, removal as chair of a committee

The recently proposed legislation and provincial consultation about how to penalize members for harassing and discriminatory conduct, and Justice Marrocco's recommendations, highlight the need for Council to review the City's Codes of Conduct (and the legislation related to them) to ensure Toronto's accountability and integrity framework reflects, in the words of the preamble of the Codes of Conduct, the highest standards of conduct for members, as expected by the public.

Updating the Codes of Conduct

The Integrity Commissioner recommends that a review of the Code of Conduct for Members of Council specifically include, but not be limited to:

- Provisions regarding attendance at TLAB, other tribunals and similar bodies
- Participation in fundraising activities
- Receipt of gifts and travel

The Integrity Commissioner recommends that a review of all the City's Codes of Conduct include:

- Conflict of interest and financial disclosure provisions
- Use of gender neutral language
- Use of plain language/accessible formatting

Toronto was at the forefront of Canadian municipalities when it adopted its Code of Conduct in 2008 and appointed its first Integrity Commissioner. Other municipalities have learned from, and built on, Toronto's expertise. In turn, they have adopted new practices and provisions that Council may wish to consider for ensuring our

accountability framework reflects contemporary best practices. Establishing a regular review of the City's Codes of Conduct needs to be considered by Council.

Direct Reporting and Consultations

Chapter 3 of the Toronto Municipal Code requires the Integrity Commissioner to report to the Executive Committee, and then Council, with proposed changes to the Code of Conduct.

Debate and consideration of changes to the Code of Conduct have direct and substantial impact on all members and their work. The Integrity Commissioner is accountable to Council as a whole, must be transparent, and must be seen to report to and hear from all members in an even-handed manner. For this reason, the Integrity Commissioner recommends that he report directly to Council, rather than a committee, with any interim or final reports concerning changes to the Code of Conduct and related legislation. All members need to be afforded full opportunity to consider these issues.

Advance input from members on changes to the City's Codes of Conduct would assist the Integrity Commissioner in making recommendations to Council. For this reason, the Integrity Commissioner recommends that Council request that his review must include member consultation.

In addition to being of interest to members of Council, amendments to the Code of Conduct, the City of Toronto Act, 2006 and the MCIA are of interest to the public and stakeholders. In particular, members of the public and organizations having an interest in or experience of workplace harassment and discrimination have an important perspective. For this reason, the Integrity Commissioner recommends that Council specifically direct that public and stakeholder consultations be undertaken to help inform a final report to Council.

CONTACT

Jonathan Batty, Integrity Commissioner, Jonathan.Batty@toronto.ca, 416-397-7770

SIGNATURE

Jonathan Batty
Integrity Commissioner