TORONTO

OFFICE OF THE INTEGRITY COMMISSIONER

SUBMISSIONS TO THE STANDING COMMITTEE ON SOCIAL POLICY – BILL 68, *MODERNIZING ONTARIO'S MUNICIPAL LEGISLATION ACT, 2017*

Valerie Jepson
Integrity Commissioner
City of Toronto
April 10, 2017

Biography - Valerie Jepson, Integrity Commissioner for the City of Toronto

Ms. Jepson is the Integrity Commissioner for the City of Toronto. In this role she is responsible for overseeing the Code of Conduct in place for elected and appointed officials at the City of Toronto. As Integrity Commissioner, Ms. Jepson is responsible for raising awareness about the Code of Conduct, providing advice about meeting the standards in the Code of Conduct and carrying out investigations when allegations of misconduct are made.

From 2007 to 2014, Ms. Jepson was the In-house Counsel to the Integrity Commissioner for the Province of Ontario. In this position, Ms. Jepson advised the Ontario Integrity Commissioner on all aspects of her mandate including the conduct of MPPs, lobbyist registration and disclosure of wrongdoing.

From 2001 to 2007, Ms. Jepson practiced as a litigator in the private sector for law firms in Calgary and Toronto in a variety of areas of litigation.

Ms. Jepson is a member of the Law Society of Upper Canada and the Law Society of Alberta. From 2012 to 2015, Ms. Jepson taught Canadian Administrative Law in the Global Professional LLM program and the Internationally Trained Lawyers Program at the University of Toronto. Prior to becoming the Integrity Commissioner for Toronto, Ms. Jepson was an active member of the Ontario Bar Association (OBA) Public Lawyers Section and held various positions on the executive.

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Introduction

I am the Integrity Commissioner for the City of Toronto, an appointment I have held since fall 2014. As Integrity Commissioner I am independent from Toronto City Council and City administration. These submissions are therefore my views and to the best of my ability the views of the Office of the Toronto Integrity Commissioner gained over the past ten years.

There are three reasons why I am appearing today:

- To show support for the policy direction of Bill 68 which will integrate the *Municipal Conflict of Interest Act*[1] (MCIA) regime with the Code of Conduct/Integrity Commissioner regime, a welcome and overdue development.
- To recommend specific improvements to Bill 68.
- To provide the Committee with context to assist with its work.

About the Office of the Toronto Integrity Commissioner

Together with the other Toronto 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 Canada. The City of Toronto was the first municipality in Canada to appoint an Integrity Commissioner in June 2004 prior to the enactment of Part V of the *City of Toronto Act, 2006*[2] (COTA), which required the appointment of an Integrity Commissioner. Toronto City Council has demonstrated its commitment to the accountability framework by enacting Chapter 3 of the Toronto Municipal Code, a special bylaw that contains safeguards for independence and expands on the roles and responsibilities of each accountability officer.

As provided for in Chapter 3 of the Toronto Municipal Code, the Toronto Integrity Commissioner is responsible for carrying out the following duties:

- To provide advice to members of Council and local boards on the application of the Code of Conduct, City or local board policies with respect to members' conduct and general advice with respect to the MCIA.
- To conduct investigations about whether a member of Council or a local board has contravened the Code of Conduct.

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[1] R.S.O. 1990, c. M50.
[2] S.O. 2006, c.11, sched. A.

- To provide opinions on policy matters on issues of ethics and integrity.
- To provide educational programs to members of Council and local boards.

I have brought with me several copies of the 2016 Annual Report of the Office in case it is of benefit to the members of this Committee to have a deeper understanding of the types of issues that come before me and the work of the Office.

Bill 68 Is an Important and Positive Step Forward

One of the main innovations of Bill 68 is to require that all municipalities in Ontario have access to an integrity commissioner that performs a wide-range of duties. In some ways, the model endorsed by Bill 68 is the one that Toronto City Council endorsed through its own bylaws. It is my view that the Toronto experience is evidence of the benefits of a well-developed integrity commissioner program. In Toronto, there is a culture of advice seeking, there are complaints and these are addressed. This is a system that works.

The Integrity Commissioner/Code of Conduct framework has existed along-side – and in many respects, separate – from the MCIA. As observed by Justice Cunningham in his 2010 Report about the Mississauga Judicial Inquiry, the two frameworks must be integrated.[3] Indeed, ever since there has been an Integrity Commissioner in Toronto, there have been calls to review and amend the legislative framework to incorporate the integrity commissioner and code of conduct regime with the MCIA.[4]

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[3] The Honourable J. Douglas Cunningham, Commissioner, Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure, November 11, 2009, pp. 166-173 (Recommendations 7-14) ("Cunningham Report").

[4] April 11, 2005 Interim Report of the Integrity Commissioner to Toronto City Council, pp. 7-8, http://www.toronto.ca/legdocs/2005/agendas/council/cc050412/nomj%2834%29.pdf; May 8, 2006 Annual Report of the Integrity Commissioner to Toronto City Council September 1, 2004-December 31, 2005, p. 14, http://www1.toronto.ca/City%20Of%20Toronto/Integrity%20Commissioner/Shared%20Content/Files/integrity-commissioner-annual-report-2005-2006.pdf; September 21, 2006 Report of the Integrity Commissioner to Toronto City Council Regarding Amendments to Code of Conduct for Members of Council, pp. 2, 10-12, http://www1.toronto.ca/City%20Of%20Toronto/Integrity%20Commissioner/Shared%20Content/Files/2006-09-21-bellamy-commission-recommendations.pdf; January 29, 2007 Report of the Integrity. Commissioner to Toronto City Council Regarding Amendments to the Code of Conduct Complaint Protocol under Members Code of Conduct, pp. 13-15, http://www.toronto.ca/legdocs/mmis/2007/cc/bgrd/cc2.5.pdf; June 16, 2008 Report of the Integrity Commissioner to Toronto City Council Regarding Issues Arising Out of Operation of Members Code of Conduct and Complaint Protocol, pp. 7-8, http://www.toronto.ca/legdocs/mmis/2008/ex/bgrd/backgroundfile-13844.pdf; July 8, 2008, Integrity Commissioner End of Term Report – 2008, pp. 10-12, http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-14756.pdf.

While there are many positive aspects of the status quo, there are some significant shortcoming of the current regime. From the perspective of municipal councillors, the status quo is fragmented and unnecessarily complex because there are two regimes for compliance. First, members are bound by the MCIA in relation to *pecuniary* conflicts of interests. Complaints about pecuniary conflicts of interest are made through applications to Court. Separately, members are also bound by Codes of Conduct and can be subject to investigation for failure to comply.

From the perspective of the public, the status quo is inaccessible and cumbersome, requiring citizens to commence formal court proceedings to raise concerns about conflicts of interest, and potentially causes confusion about whether to commence a court application or file an Integrity Commissioner complaint.

Bill 68 will authorize integrity commissioners to provide advice and receive complaints about code of conduct matters *and* pecuniary interests. The establishment of a more cohesive framework is a welcome and necessary step in the evolution of accountability frameworks at the local level.

What Could Be Improved in Bill 68?

The following additional amendments are necessary to strengthen and support the general policy objectives of Bill 68.

1. Indemnification

I strongly recommended that COTA and the *Municipal Act, 2001*[5] be amended to require municipalities to protect all accountability officers (i.e. integrity commissioners, ombudsmen, auditors general, lobbyist registrars and open meeting investigators) against risks of pecuniary loss or liability related to the performance of their duties.

Exposure to potential lawsuits and judicial reviews related to the performance of their duties is a significant risk for accountability officers. This risk could improperly give rise to unreasonable personal liability and/or negatively impact the independence of the offices. Considering the significant responsibilities that Bill 68 assigns to local accountability officers, Bill 68 should be clear that municipalities must protect their accountability officers against risks of pecuniary loss or liability related to the performance of their duties, whether or not they are City employees.

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[5] S.O. 2001, c. 25.

Justice Cunningham recognized the need to enhance and protect the independence of local integrity commissioners and, indeed, he specifically recommended that commissioners be appointed for fixed terms and that they be indemnified by the municipalities that they serve.[6]

Practically speaking, this issue is not a concern in Toronto because of the well-developed accountability framework. However, it is an acute issue for municipalities with less developed accountability frameworks. I know that this committee will be hearing from a fellow integrity commissioner, Suzanne Craig, about this very issue.

I can advise this committee that many integrity commissioners in Ontario support this recommendation and have consistently raised serious concerns about this issue throughout the consultation process.

Furthermore, the Toronto accountability officers have written to the Ministry of Municipal Affairs and Housing to record our collective view that Bill 68 should do more to enhance and protect the independence of local accountability officers. I have appended our full submissions at Appendix 1 to my written statement.

I offer the following proposed wording based, in part, in sections 25 and 26 of the *Members' Integrity Act, 1994*[7]:

> Immunity
> 1. (1) No proceeding shall be commenced against the Commissioner [or applicable Officer] or an employee in his or her office for any act done or omitted in good faith in the execution or intended execution of the Commissioner's or employee's duties under this Act or any other Act.
> Indemnity
> 2. (1) Notwithstanding the obligation for the Commissioner to carry out duties in an independent manner, the Commissioner shall be indemnified and saved from harm by the municipality when carrying out duties in this Part.
>
> Testimony
> 3. (1) Neither the Commissioner nor any person acting on his or her direction is a competent or compellable witness in a civil proceeding in connection with anything done under this Act or any other Act, except as may be required to apply to a judge under section 8 of the Municipal Conflict of Interest Act for a

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[6] Cunningham Report, p. 165.
[7] S.O. 1994, c. 38.

determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act.

2. Codes of Conduct Should Be Required to Include Provisions about Conflict of Interest, Including Pecuniary Conflicts of Interest

It is recommended that Bill 68 prescribe that codes of conduct approved by local councils must include conflict of interest provisions that are similar in nature and kind to the conflict of interest provision set out in section 2 of the *Members' Integrity Act, 1994.*[8] Since the Honourable Members of this committee are bound by the *Members' Integrity Act, 1994,* you will be familiar with the definition.

To borrow from the esteemed Professor Greg Levine,

> Conflict of interest in the public sector is the clash of a private interest with a public duty. It involves the potential to further private, personal interest at the expense of fulfilling public duty and acting in the public interest.
> ...
> Interests may be characterized as private or public, personal or collective, financial (pecuniary) or social. Interests in conflict of interest law have typically focused on pecuniary or financial interests. This is likely so because such interests are more measurable and more susceptible to evidentiary arguments and proof than perhaps less tangible interests. Nonetheless ... private interest more broadly construed is the growing norm in government ethics law in Canada.[9]

Again, Justice Cunningham accepted that codes of conduct should include the common meaning of conflict of interest, including pecuniary conflicts of interest. Justice Cunningham stated:

> Municipal codes of conduct can help to regulate the conflicts of interest of members of municipal council in a more targeted and flexible manner than can provincial statutes such as the MCIA.
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> ...

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[8] Ibid. Section 2 provides: "A member of the Assembly shall not make a decision or participate in making a decision in the execution of his or her office if the member knows or reasonably should know that in the making of the decision there is an opportunity to further the member's private interest or improperly to further another person's private interest."

[9] Gregory J. Levine, The Law of Government Ethics, Federal Ontario, and British Columbia, 2d. Ed. (Toronto: Canada Law Book, 2015), pp. 9-10 (internal citations omitted).

> Ontario municipalities can adopt codes of conduct covering the same pecuniary conflicts of interest of members of council and local boards as the MCIA, while allowing for more flexible enforcement mechanisms and sanctions. Municipal codes of conduct can go significantly further than the MCIA and be tailored to the types of relationships and circumstances that reflect the needs of the municipality.[10]

The overall thrust of Bill 68 is to integrate the MCIA regime with codes of conduct and integrity commissioners. To fully realize the vision of Justice Cunningham, it is essential that the new statutory scheme clearly signal that that general conflicts of interest, including pecuniary conflicts of interest, must be addressed in local codes of conduct.

If this issue is not clarified in Bill 68, there is a risk that there will remain a legal ambiguity about whether the MCIA "occupies the field" for conflicts of interest and that therefore, codes of conduct cannot include provisions about conflict of interest at all. This latter interpretation is the reason why some codes of conduct (including Toronto) do not include a general conflict of interest provision. Further, the latter interpretation still persists even though it was rejected by Justice Cunningham in the Mississauga Inquiry.[11]

Bill 68 presents an important opportunity to eliminate any ambiguity about this issue. In sum, it is submitted that the Bill be amended to clarify that codes of conduct not only can include general conflict of interest provisions but that they *must*.

As an example, I offer the committee the following legislative amendments to COTA:

> Subsection 157(3) of the Act is repealed and the following substituted:
>
> ...
>
> Conflict of Interest
> (3.2) A code of conduct shall include conflicts of interest as a subject matter, including but not limited to conflicts of interest that arise from an interest within the meaning of the *Municipal Conflict of Interest Act.*
>
> Regulations
> (4) Notwithstanding paragraph (3.1), the Minister may make regulations prescribing one or more subject matters that the City is required to include in a code of conduct.

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[10] Cunningham Report at pp. 159-160; see also note 4, supra.
[11] Ibid.

3. Expand the Scope of Remedies Available to Councils to Deal with Code of Conduct Complaints.

It is recommended that Bill 68 be amended to expand the range of remedies available to Councils to deal with Code of Conduct complaints. The decision in *Magder v. Ford*,[12] interpreted COTA as authorizing City Council only to impose one of two punitive actions on a finding of a Code contravention: suspension of pay or a reprimand. The decision in *Magder* has had a chilling effect on the ability of commissioners – and therefore Councils – to fashion remedies responsive to the contraventions. It must be remembered that the ruling in *Magder* was a technical application of the powers of a municipality and made no comment on the policy implications or *bona fides* of the range of penalties that should be available to Councils. Further, it must be recalled that Bill 68 enhances the procedural protections that must be provided to members of Council (i.e. amendments allowing them to participate) and so the policy concerns in *Magder* have been addressed.

I offer the following proposed amendments to section 160(5) of COTA:

> (5) City council may impose ~~either~~ any of the following penalties or remedial actions on a member of council or of a local board (restricted definition) if the Commissioner reports to council that, in his or her opinion, the member has contravened the code of conduct:
>
> > 1. A reprimand.
> > 2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006, c. 11, Sched. A, s. 160 (5).
> > 3. Removal from a Council or local board (restricted definition) committee or, in the case of a local board (restricted definition) removal from an officer position on the board.
> > 4. A direction to apologize or make other amends to an aggrieved party, to Council, a local board (restricted definition) or the public.
> > 5. Any other action recommended by the Commissioner that is intended to remediate the circumstances.
> > (6) In no circumstances does a City Council have authority to remove a member of Council from office.

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[12] 2013 ONSC 1842.

4. Clarification that in Exercising Discretion Whether to Bring an MCIA Matter to Court the Commissioner Will Assess Whether the Matter Can Be Resolved by City Council.

I recommend that Bill 68 be amended to provide greater clarity about how an Integrity Commissioner will decide whether to take a matter to Court. It is understood that the overall objective of Bill 68 is to enable local integrity commissioners and councils to address allegations of misconduct against members of Council. It is respectfully observed that the provisions, as drafted, create certain ambiguities about how an integrity commissioner ought to attempt to resolve a complaint that includes an allegation that a member has participated in a decision for which they have a pecuniary interest (i.e. an MCIA matter).

The legislation should be clarified to confirm that under the new framework, local integrity commissioners can resolve all manner of misconduct complaints, including those that involve pecuniary interests, with reports and recommendations to Council. Justice Cunningham stated, "Municipal codes of conduct can allow for enforcement outside the court system and without the associated costs. The sanctions available under municipal codes of conduct can also be more varied and less severe than under the MCIA."[13]

I suggest the following brief amendment that would, in my view, clarify the nature of the role played by local integrity commissioners.

Possible amendment to COTA section 160:

> Completion
> (12) Upon completion of the inquiry, the Commissioner may, if he or she considers it appropriate, apply to a judge under section 8 of the Municipal Conflict of Interest Act for a determination as to whether the member has contravened section 5, 5.1 or 5.2 of that Act.
>
> (12.1) In exercising his or her discretion under subsection (12) the Commissioner shall consider, among other factors, whether the subject matter of the inquiry could be appropriately addressed by City Council as a Code of Conduct matter.
>
> Notice to applicant re decision not to apply to judge
> (13) In the case of an inquiry conducted in respect of an application under subsection (2), the Commissioner shall advise the applicant if the Commissioner will not be making an application to a judge.

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[13] Cunningham Report at p. 160.

Possible amendment to MCIA sections 12 and 15:

> 9. Sections 12 and 15 of the Act are repealed and the following substituted:
> ...
>
> 13(1) A proceeding that relates to a member's or former member's ~~conflict of interest~~ alleged interest within the meaning of this Act and seeks a remedy described in paragraph 1 of subsection 9(1) shall be brought only under this Act.
>
> (2) Subsection (1) does not affect the power of a municipality or a local board to impose any penalty or remedial action under subsection 223.4(5) or (6) of the *Municipal Act* or under subsection 160(5) or (6) of the *City of Toronto Act, 2006.* ~~reprimand a member or suspend a member's remuneration under subsection 223.4(5) or (6) of the *Municipal Act* or under subsection 160(5) or (6) of the *City of Toronto Act, 2006.*~~

5. Financial disclosure

It is recommended that COTA be amended to introduce mandatory annual disclosure of private interests for elected officials in Toronto. The types of interests to be disclosed could include financial interests (*i.e.* assets, liabilities, real property, debts), outside employment, and outside directorships.

The Honourable Justice Denise E. Bellamy recommended that Toronto City Council introduce financial disclosure for councillors in her 2005 report into the Toronto Computer Leasing and External Contracts Inquiries.[14]

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.[15] In British Columbia, all elected officials, including local government officials,

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

[15] *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)

are required to make annual financial disclosures.[16] In the absence of legislative authority or requirement, the members of the Calgary City Council disclose their financial interests on an annual basis.[17]

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. Specific examples with citations are set out in Appendix 2 to these remarks.

Toronto is the fourth largest city in North America and has a government that is larger than many Canadian provinces. This committee can also look, therefore, to the provincial governments as model jurisdictions.

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.*[18] This practice is now required for members of the federal Parliament and almost 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.

Mandatory disclosure of personal financial interests for elected officials is a well-recognized component of any developed accountable government.[19] 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 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."[20] The

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(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).

[16] 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).

[17] http://www.calgary.ca/councillors/Pages/Councillor-Disclosure-Statements.aspx.

[18] S.O. 1988, C. 17.

[19] http://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Income_and_Asset_Declarations.pdf.

[20] *Ibid.*, at p. xi.

disclosure system can also "provide an effective reminder to public officials of the duty to accountability that comes with public office."[21] 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. For instance, the Toronto Code of Conduct requires 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*[22] 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, Bill 68 presents an opportunity to set a high standard of accountability and to specifically mandate this important component into the Toronto accountability framework.

Proposed amendment to COTA:

> **15. Subsection 157(3) of the Act is repealed and the following substituted:**
>
> ...
>
> The City shall establish policies and procedures for the Integrity Commissioner to administer annual public financial disclosure of interests of members of Council.

6. Coming into Force.

The changes set out in Bill 68 are significant and will require time for municipalities to prepare. The implementation of Bill 68 will also fundamentally alter the oversight regime for current council and local board members across Ontario. It is therefore recommended that the parts of the Bill with respect to member conduct should not come into force before the beginning of the next term of office for members of municipal councils (November 2018).

Conclusion

I would like to take this opportunity to thank and commend the public servants in the Ministry of the Municipal Affairs and Housing who have worked hard to ensure that the role of municipal integrity commissioners is understood in this review. My thanks also to the members of this Committee for the opportunity to appear today. Although most of

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[21] *Ibid.*, at p. 1.
[22] S.O. 1996, C. 32, Schedule 2 (as amended 2012, C. 8, Schedule 35).

my time has focused on refinements – some more significant than others – I hope that I have conveyed that the changes Bill 68 will bring about are welcome and responsive to some significant challenges. There are however important details that must be clarified to ensure that the well-intentioned policy objectives are achieved.

Thank you for attention and for considering my submissions. I would be pleased to answer your questions.

Respectfully submitted,

Valerie Jepson
Integrity Commissioner
City of Toronto
April 10, 2017

Appendix 1- City of Toronto Accountability Officers' Submissions Regarding Independence and Information Sharing

Recommendation 1

It is recommended that the City of Toronto Act, 2006 (and the Municipal Act) be amended to expressly recognize and entrench the following features of independence:

a. That the positions of the Integrity Commissioner, the Lobbyist Registrar, the Ombudsman and the Auditor General (the Accountability Officers) are independent "Officers of Council" similar in status to the Provincial Officers of the Assembly.

b. That the Office of each Accountability Officer is recognized as an independent institution, separate from the City of Toronto, for the purposes of the Municipal Freedom of Information and Protection of Privacy Act.

c. That Accountability Officers have full control of, and are responsible for, the management of their Office, independent from City Council and City administration.

d. That the Accountability Officers are appointed for fixed terms.

e. That the Accountability Officers can only be appointed or removed for cause on a two-thirds vote of all Council members.

f. That the Accountability Officers are required to table an annual report before Council.

g. That the Office of each Accountability Officer is subject to an external audit.

Comments

The City of Toronto Act, 2006 (COTA) requires that the each Accountability Officer carry out her work in an "independent manner" (sections 159(1), 168(1), 171(1) and 178(1.1)). This means that an Accountability Officer 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 Accountability Officers, Toronto City Council adopted a comprehensive Bylaw (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 the By-law offers a model that stands apart from other municipalities in Ontario. 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 codifies important principles relating to the independence of the Accountability Officers.

The principles of independence and accountability are of sufficient importance to the proper functioning of Accountability Officers 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 (and the Municipal Act) be amended to empower and require the City to protect 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 potential lawsuits and judicial reviews related to the performance of their duties is a significant risk for Accountability Officers. This risk could improperly give rise to unreasonable personal liability and/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 City employees.

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 Accountability Officers. This need for the 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.

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) Legislation 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 the 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 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. 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.

Appendix 2 – Financial Disclosure Comparator Jurisdictions

- New York City has required financial disclosures since 1975.[23] 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.[24]
- 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 nominated to office, assuming office, annually while holding office, and upon leaving office.[25]
- 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.[26]
- 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.[27] City officials must also make annual disclosures.[28] The disclosures are considered public records and must be maintained for five years.[29] All such disclosures are considered to supplement disclosures required by state and federal law.[30]

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[23] http://www.nyc.gov/html/conflicts/downloads/pdf3/fd_leg_hist/leg_his_fd_1975_to_2012_wlinks.pdf.
[24] http://www.nyc.gov/html/conflicts/html/units/disclosure.shtml.
[25] 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.
[26] http://www.cityofchicago.org/city/en/depts/ethics/provdrs/statements_of_financialinterests/svcs/sfi.html.
[27] http://www.houstontx.gov/2013election/2013electionpacket.pdf.
[28] http://www.houstontx.gov/2013election/(11)Ch18.pdf.
[29] *Ibid.*
[30] http://www.houstontx.gov/compliance/officials.html.