

COMMITTEE OF THE WHOLE MAY 28, 2007

IMPLEMENTATION OF INTEGRITY COMMISSIONER

Recommendation

The City Manager and the Commissioner of Legal and Administrative Services in consultation with the Senior Management Team recommend as follows:

1. That the Integrity Commissioner's mandate be applied to members of Council.
2. That the mandate as detailed in this report be adopted.
3. That the duties of the Integrity Commissioner as detailed in this report be adopted and be applicable to members of Council only.
4. That the Accountability and Transparency Committee, along with the Integrity Commissioner, once appointed, review the current Council Code of Conduct and make recommendations to Council regarding any revisions.
5. That a draft complaint procedure for the Council Code of Conduct be reviewed by the Integrity Commissioner and the Accountability and Transparency Committee, to make recommendations to Council for final approval.
6. That the Integrity Commissioner provide an annual general report to Council.
7. That the Integrity Commissioner make recommendations to Council regarding proposed penalties where contraventions of the Council Code of Conduct are found.
8. That an independent executive search firm be retained to recruit for the Integrity Commissioner position.
9. That the list of qualifications of the Integrity Commissioner detailed in this report be approved.

Economic Impact

Council approved funding for the implementation of the Office of the Integrity Commissioner on April 23, 2007.

Communications Plan

Once an Integrity Commissioner is in place, the City of Vaughan's website should be updated to include a page for the Office of the Integrity Commissioner. This page should provide links to the Code of Conduct, Complaint Procedure, applicable forms, public reports, frequently asked questions and contact information.

Purpose

This report outlines the steps for implementation of an Integrity Commissioner. At its' meeting on April 23, 2007, Council directed staff to bring a report to the Committee of the Whole meeting of May 28, 2007, outlining the implementation, parameters, roles and responsibilities for the Office of the Integrity Commissioner, modelled in a similar fashion to the parameters adopted by the City of Toronto.

Council also directed that an Accountability and Transparency Committee be established to review the City's current policies/practices pertaining to the Code of Conduct, confidentiality,

accountability and transparency, and this committee also make recommendations to Council regarding the appointment of an Integrity Commissioner. This report will be presented at the Committee of the Whole meeting on June 18, 2007.

Background – Analysis and Options

A. Mandate

A municipality may assign specific functions and duties to an Integrity Commissioner with respect to the application of the Code of Conduct for members of Council and/or local boards and the application of any procedures, rules or policies of the municipality governing the ethical behaviour of Council and/or local boards.

The *Municipal Act* defines local boards as “a municipal service board, transportation commission, public library board, board of health, police services board, planning board, or any other board, commission, committee, body or local authority established or exercising any power under any Act with respect to the affairs or purposes of one or more municipalities, excluding a school board and a conservation authority”. Based on this definition, the following statutory committees and boards could fall within the Integrity Commissioner’s mandate, should Council choose to include them:

- Vaughan Public Library Board
- Accessibility Advisory Committee
- Committee of Adjustment
- Court of Revision
- Emergency Management Program Committee
- Hearing Committee for Licensing Matters
- Heritage Vaughan
- Property Standards Committee

While members of Council sit on some of these boards and committees, most are comprised of members of the public. Currently, the Code of Conduct for Council does not apply to local board or committee members. **Staff recommend that the Integrity Commissioner’s mandate be applied to members of Council only.** The mandate can be reviewed in the future.

The City of Toronto adopted its Code of Conduct in September, 1999 and directed that it apply to Council and all other appointments to City agencies, boards and commissions. In September, 2006, the Integrity Commissioner’s mandate was expanded when the Council Code of Conduct Complaint Protocol was amended to apply to complaints against members of local boards.

In keeping with the City of Toronto’s model, the Integrity Commissioner’s mandate may include the following:

1. **Advisory:** To provide written and oral advice to individual members of Council about their own situation respecting the Code of Conduct and other by-laws and policies governing the ethical behaviour of members, including general interpretation of the *Municipal Conflict of Interest Act*; and providing the full Council with specific and general opinions and advice respecting compliance by elected officials with the provisions of governing Acts, and other conduct policies;
2. **Complaint Investigation:** To assess and investigate complaints against elected officials from members of the public, City staff, and Councillors or on reference from the whole Council;
3. **Complaint Adjudication:** To determine whether a member of Council has violated a City protocol, by-law or policy governing their ethical behaviour except that (as in the provincial model) Council makes the final decision on whether any penalty (as limited by

- the Act) recommended by the Commissioner is imposed on the member found in contravention; and
4. **Educational:** To publish an annual report on findings in typical advice and complaint cases; providing outreach programs to members of Council and staff on legislation, protocols, and office procedures emphasizing the importance of ethics for public confidence in municipal government; and disseminating information available to the public on the City's website.

It should be noted that the City of Toronto's Integrity Commissioner's advisory role includes assisting with the general interpretation of the *Municipal Conflict of Interest Act*. This legislation deals with pecuniary conflicts of interest. Council members receive their own independent legal advice related to the *Municipal Conflict of Interest Act*. The Integrity Commissioner will not be able to answer specific questions of individual compliance or provide legal advice in relation to this legislation. **Staff recommend that the above mandate be adopted.**

B. Duties

In accordance with the City of Toronto's model, the Integrity Commissioner's duties may include the following:

1. To provide written and oral advice to individual members of Council about their own situation under the Code of Conduct and other by-laws, policies and protocols governing the ethical behaviour of Council.
2. To provide Council with specific and general opinions and advice on the City's by-laws, policies and protocols regulating the conduct of members of Council, and issues of compliance with those by-laws, policies and protocols.
3. To conduct inquiries into a request made by Council, a member of Council, or a member of the public into whether a member of Council has contravened any applicable code of conduct.
4. To determine whether a member of Council has in fact violated a City by-law, policy or protocol governing their ethical behaviour and report any violation with any recommendation for sanction to Council, in accordance with the *Municipal Act* and any prevailing City protocols or policies.
5. To publish an annual report on the work of the office of the Integrity Commissioner including examples in general terms of advice rendered and complaints received and disposed of.
6. To provide general advice to members of Council and City of Vaughan staff on issues of ethics and integrity including relevant statutes, codes of conduct, City by-laws, policies, protocols and office procedures, and emphasizing the importance of ethics for public confidence in municipal government.

In the Toronto model, the above duties include local boards and Council staff. **It is recommended that the duties as listed above be adopted and be applicable to members of Council.**

C. Code of Conduct

The City of Vaughan has a Code of Conduct for members of Council. This Code of Conduct should be updated to include provisions regarding a complaint procedure and penalties. **It is recommended that the Accountability and Transparency Committee, along with the Integrity Commissioner, once appointed, review the current Code of Conduct and make recommendations to Council regarding any revisions.**

D. Complaints Procedure

A procedure for the filing of complaints and investigations by the Integrity Commissioner should be drafted and approved by Council. As a reference, the City of Toronto's Council Code of Conduct Complaint Protocol is attached at Attachment 1. It sets out both an informal and formal complaint procedure. It requires that formal complaints must be in writing and include a supporting affidavit setting out the evidence in support of the complaint. Attachment 2 is a copy of the form of affidavit.

The Protocol also deals with the types of complaints not dealt with by the Integrity Commissioner and the manner in which the Integrity Commissioner will investigate and report on complaints.

A number of other matters may be considered for the complaint procedure, including the following:

- the manner in which complaints may be withdrawn and how the Integrity Commissioner should deal with this (terminate or continue investigation where warranted);
- whether the Integrity Commissioner may commence investigations of his or her own accord;
- when a public inquiry under the *Public Inquiries Act* may be initiated;
- whether notice provisions for members of Council who are the subject of a complaint should be implemented where sanctions are being recommended along with an opportunity to comment on the proposed sanction;
- specifics regarding the preservation of secrecy and confidentiality of investigations;
- what information will be made available to the public; and
- the manner in which any contraventions of the *Criminal Code* or other Acts are to be handled.

Staff will proceed to draft a complaint procedure. **It is recommended that a City of Vaughan draft complaint procedure be reviewed by the Integrity Commissioner and the Accountability and Transparency Committee, to make recommendations to Council for final approval.**

E. Reporting to Council

An Integrity Commissioner may provide a periodic report to Council regarding his or her activities, summarizing advice given without disclosing confidential information that could identify any person concerned. The City of Toronto's Integrity Commissioner has submitted annual reports which discuss the general nature of the matters handled, including samples of the advice provided. In addition, other aspects of his work are addressed along with procedural and budgetary matters. **It is recommended that an annual general report be provided to Council.**

Toronto's Integrity Commissioner also provides reports to Council upon the completion of individual investigations, with recommendations where warranted. The *Act* provides a duty of confidentiality with respect to the handling of investigations and reporting. The complaint procedure will contain provisions addressing reporting to Council on individual matters.

F. Delegation

The City of Toronto's Integrity Commissioner makes recommendations to Council regarding proposed penalties where contraventions of the Code of Conduct are found. Council makes the final decision as to the appropriate penalty. Alternatively, Council may delegate the authority to assess and impose penalties to the Integrity Commissioner. In this case, an appeal process would be appropriate with the appeal being made to Council. In any event, any administrative decision is subject to judicial review. **It is recommended that the Integrity Commissioner make recommendations to Council regarding proposed penalties.**

G. Qualifications and Recruitment

Given the special role of such an official in advising Council, it would be appropriate for the City Integrity Commissioner to be recruited using the services of an independent executive search firm. Alternatively, Council can authorize staff to place an advertisement in appropriate sources for the position, as other levels of government have done. Appointment of the Integrity Commissioner would be recommended by the Accountability and Transparency Committee. **It is recommended that an independent executive search firm be retained to recruit for the Integrity Commissioner position.** Funding was approved by Council on April 23, 2007.

It is important that a City Integrity Commissioner meet a set of qualifications that ensures the greatest independence from the members of Council and the business of the City. The qualifications for the position of Integrity Commissioner should include:

- A degree from a recognized university in a relevant field of study such as law, ethics or public administration, or a combination of equivalent education, training and/or experience
- Comprehensive experience in managing investigation activities, including the application of alternative dispute resolution methods
- Experience in representing an organization, in interacting and consulting at a senior level with a broad range of stakeholders, policy and decision-makers, as well as the media
- Extensive knowledge of relevant legislation, including the *Municipal Act, 2001* and the *Municipal Conflict of Interest Act*
- Knowledge of municipal government
- Municipal law adjudication experience
- Proven impartiality and neutrality such as that of a judge
- Must possess personal and professional integrity along with good interpersonal skills and discretion
- The ability to interpret provisions of various statutes, regulations, policies
- Able to provide services on a part-time, flexible, and as-needed basis
- Have no other dealings or employment with the City or financial interest in work undertaken by the City
- Having no involvement in political campaigning/endorsements, or related conflicts-of-interest

It is recommended that the above qualifications be approved.

H. Next Steps

As noted above, a report on the establishment of the Accountability and Transparency Committee will be presented to Council on June 11, 2007. It is anticipated that the Accountability and Transparency Committee will be formed in the Fall of 2007, at which time a short list of candidates for the position of Integrity Commissioner can be considered and a final recommendation be made to Council.

Relationship to Vaughan Vision

This report is consistent with the priorities in the Vaughan Vision and the appropriate resources have been allocated and approved.

Regional Implications

None.

Conclusion

This report is provided in response to Council direction. To further the implementation of the Office of the Integrity Commissioner, staff recommend the matters included in the Recommendations section of this report.

Attachments

Attachment 1: City of Toronto Council Code of Conduct Complaint Protocol

Attachment 2: City of Toronto Supporting Affidavit for Complaints

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Respectfully Submitted,

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Commissioner of Legal and
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COUNCIL CODE OF CONDUCT COMPLAINT PROTOCOL

(Authority: Clause No.4 of Report No.2 of the Policy and Finance Committee, March 1, 2 and 3, 2004)

(Amended: Clause No.1 of Report No.3 of the Policy and Finance Committee, on April 25, 26 and 27, 2006)

PART A: INFORMAL COMPLAINT PROCEDURE

Individuals (for example, City employees, members of the public or members of Council) or organizations who have identified or witnessed behaviour or an activity by a member of Council that they believe is in contravention of the Code of Conduct for Members of Council (the “Code of Conduct”) may wish to address the prohibited behaviour or activity themselves as follows:

- (1) advise the member of Council that the behaviour or activity contravenes the Code of Conduct;
- (2) encourage the member of Council to stop the prohibited behaviour or activity;
- (3) keep a written record of the incidents including dates, times, locations, other persons present, and any other relevant information;
- (4) tell someone else (for example, a senior staff member or an officer of the organization) about your concerns, your comments to the member of Council and the response of the member of Council;
- (5) if applicable, confirm to the member of Council your satisfaction with the response of the member of Council; or, if applicable, advise the member of Council of your dissatisfaction with the response; and
- (6) consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with an applicable judicial or quasi-judicial process.

Individuals and organizations are encouraged to initially pursue this informal complaint procedure as a means of stopping and remedying a behaviour or activity that is prohibited by the Code of Conduct. However, it is not a precondition or a prerequisite that they pursue the informal complaint procedure prior to pursuing the formal complaint procedure in Part B.

PART B:**FORMAL COMPLAINT PROCEDURE: Integrity
Commissioner**

Requests for Inquiries s.1

Review Request

1. (1) A member or non-member of Council, who has reasonable and probable grounds to believe that a member of Council has contravened the Code of Conduct for Members of Council (the “Code of Conduct”), may request that the matter (the “complaint”) be reviewed.

Complaint

(2) The request shall be in writing and shall set out the grounds for the belief and the contravention alleged.

(3) All complaints shall be signed by an identifiable individual (which includes the authorized signing officer of an organization.)

(4) A complaint shall set out the grounds for the belief and the contravention alleged and include a supporting affidavit that sets out the evidence in support of the complaint.

For example, facts should include the name of the alleged violator, the provision allegedly contravened, facts constituting the alleged contravention, the names and contact information of witnesses, and contact information respecting the complainant during normal business hours.

(5) Staff of the City Clerk’s division, who are commissioners for taking affidavits, are authorized to take the supporting affidavit.

Initial Classification by Integrity Commissioner s. 2

File with Clerk

2. (1) The request shall be filed with the City Clerk who shall forward the matter to the Integrity Commissioner for initial classification to determine if the matter is, on its face, a complaint with respect to non-compliance with the Code of Conduct and not covered by other legislation or other Council policies as described in subsection (3).

Deferral

(2) If the complaint does not include a supporting affidavit, the Integrity Commissioner may defer the classification until an affidavit is received.

(3) If the complaint, including any supporting affidavit, is not, on its face, a complaint with respect to non-compliance with the Code of Conduct or the complaint is covered by other legislation or a complaint procedure under another Council policy, the Integrity Commissioner shall instruct the City Clerk to advise the complainant in writing as follows:

- (a) if the complaint on its face is an allegation of a criminal nature consistent with the *Criminal Code of Canada*, the complainant shall be advised that if the complainant wishes to pursue any such allegation, the complainant must pursue it with the City of Toronto Police Services;
- (b) if the complaint on its face is with respect to non-compliance with the *Municipal Conflict of Interest Act*, the complainant shall be advised to review the matter with the complainant's own legal counsel;
- (c) if the complaint on its face is with respect to non-compliance with the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter will be referred to the Director of the Corporate Access and Privacy office for review;
- (d) if the complaint on its face is with respect to non-compliance with a more specific Council policy with a separate complaint procedure, the complainant shall be advised that the matter will be processed under that procedure; and
- (e) in other cases, the complainant shall be advised that the matter, or part of the matter, is not within the jurisdiction of the Integrity Commissioner to process, with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

Reports

- (4) The Integrity Commissioner may report to Council that a specific complaint is not within the jurisdiction of the Integrity Commissioner.
- (5) The Integrity Commissioner shall report annually to Council on complaints not within the jurisdiction of the Integrity Commissioner, but shall not disclose information that could identify a person concerned.

Integrity Commissioner Investigation ss.3-7

Refusal
to Conduct
Investigation

3. If the Integrity Commissioner is of the opinion that the referral of a matter to him or her is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner shall not conduct an investigation, or, where that becomes apparent in the course of an investigation, terminate the investigation.

Save in exceptional circumstances, the Integrity Commissioner will not report to Council on any such complaint except as part of an annual or other general report.

Investigation

4. (1) If a complaint has been classified as being within the Integrity Commissioner's jurisdiction and not rejected under Section 3, the Commissioner shall investigate and may attempt to settle the complaint.

(2) The Integrity Commissioner will proceed as follows:

(a) serve the complaint and supporting material upon the member whose conduct is in question with a request that a written response to the allegation by way of affidavit or otherwise be filed within ten days; and

(b) serve a copy of the response provided upon the complainant with a request for a written reply within ten days.

(3) If necessary, after reviewing the written materials, the Integrity Commissioner may speak to anyone relevant to the complaint, examine any other documents relevant to the complaint and may enter any City work location relevant to the complaint for the purposes of investigation and settlement.

(4) The Integrity Commissioner may make interim reports to Council as required to address any instances of interference, obstruction or retaliation encountered during the investigation.

Final Report

(5) (a) The Integrity Commissioner shall report to the complainant and the member no later than 90 days after the making of the complaint.

	<p>(b) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall also report to Council outlining the findings, the terms of any settlement, or recommended corrective action.</p>
	<p>(c) Where the complaint is dismissed, save in exceptional circumstances, the Integrity Commissioner shall not report to Council except as part of an annual or other general report.</p>
Lawful Recommendations	<p>(6) Any recommended corrective action must be permitted in law and shall be designed to ensure that the inappropriate behaviour or activity does not continue.</p>
Member not Blameworthy	<p>5. If the Integrity Commissioner determines that there has been no contravention of the Code of Conduct or that a contravention occurred although the member took all reasonable measures to prevent it, or that a contravention occurred that was trivial or committed through inadvertence or an error of judgement made in good faith, the Integrity Commissioner shall so state in the report and shall recommend that no penalty be imposed.</p>
Copies	<p>6. The City Clerk shall give a copy of the report to the complainant and the member whose conduct is concerned.</p>
Report to Council	<p>7. The City Clerk shall process the report to the next meeting of Council.</p>
Duty of Council	<p>Council Review ss.8-9</p> <p>8. Council shall consider and respond to the report within 90 days after the day the report is laid before it.</p>
Payment of Costs	<p>9. (1) A complainant and a member of Council who are parties to a complaint under this procedure shall each be reimbursed for actual and reasonable legal and related expenses up to \$5,000.00.</p> <p>(2) Council may consider the reimbursement of costs above the limit in subsection 9(1) on a case by case basis.</p> <p>(3) Costs shall only be reimbursed under this section to the complainant, if the Integrity Commissioner concludes that the complaint is not frivolous, vexatious or made in bad faith.</p>

(4) Costs shall only be reimbursed under this section to the member of Council, if the Integrity Commissioner concludes that there has been no contravention of the Code of Conduct by the member of Council.

ATTACHMENT # 2

Code of Conduct Complaint Protocol
s. 1(4) Formal Complaint Procedure

Please note that signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 of the *Criminal Code*, R.S.C. 1985, c. C-46, and also to civil liability for defamation.

Affidavit

AFFIDAVIT OF _____ [full name]

I, _____ [full name], of the [City, Town, etc of] _____ [municipality of residence] in the Province of Ontario

MAKE OATH AND SAY [or AFFIRM]:

1. I have personal knowledge of the facts as set out in this affidavit, because _____

_____ [insert reasons e.g. I work for . . . I attended the meeting at which . . . etc].

2. I have reasonable and probable grounds to believe that a member of Toronto City Council, _____ [specify name of member], has contravened section(s) _____ [specify section(s)] of the Code of Conduct for Members of Council (the "Code of Conduct"). The particulars of which are as follows:

[Set out the statements of fact in consecutively numbered paragraphs in the space below, with each paragraph being confined as far as possible to a particular statement of fact. If you require more space, please use the attached Schedule A form and check the appropriate box below. If you wish to include exhibits to support this complaint, please refer to the exhibits as Exhibit A, B, etc. and attach them to this affidavit.]

Please see the attached Schedule A ()

1. This affidavit is made for the purpose of requesting that this matter be reviewed and for no other purpose.

SWORN [or AFFIRMED] before me at

the [City, Town, etc of] _____)

)
in the Province of Ontario on)

)
[date])

)
)

)
)

)
[Signature of commissioner])

A Commissioner for taking affidavits, etc.)

)
[Signature]

Code of Conduct Complaint Protocol s. 1(4) Formal Complaint Procedure

Please note that signing a false affidavit may expose you to prosecution under Sections 131 and 132 or 134 of the *Criminal Code*, R.S.C. 1985, c. C-46, and also to civil liability for defamation.

Page ____ of ____.

Schedule A

To the affidavit required under subsection 1(4) of The Formal Complaint Procedure

This is Schedule A referred to in the affidavit of

[full name]

Sworn [*or Affirmed*] before me on this _____ day
of _____, ____.

A Commissioner for taking affidavits, etc.