

COMMITTEE OF THE WHOLE - JUNE 15, 2010

MUNICIPAL OMBUDSMAN

Recommendation

Councillor Bernie DiVona and Councillor Sandra Yeung Racco recommend:

1. That the position of an outside/independent part time Municipal Ombudsman be approved in principle;
2. That this report be forwarded to the Accountability and Transparency Committee, for the purpose to outline the implementation, parameters, roles and responsibilities for the office of the Municipal Ombudsman modeled on the parameters as included herein;
3. That a report be brought back to a future Committee of the Whole meeting outlining the implementation, parameters, roles and responsibilities, and budgetary considerations associated with this position.

Contribution to Sustainability

N/A

Economic Impact

The economic impact will depend on the direction Council provides

Communications Plan

None at this time.

Purpose

This report has been prepared to recognize the notable changes to the Municipal Act, 2001 that has been subject to significant amendments with respect to providing local municipalities broad "governance" powers with the establishment of "**accountability officers**".

The Municipal Act amendments have included "accountability officers" to include:

1. Integrity Commissioner
2. Municipal Ombudsman
3. Auditor General
4. Lobbyist Registrar

The Association of Municipalities of Ontario have advanced and supported the amendments to the Municipal Act. Prior to the amendments to the Municipal Act, the City of Toronto alone, had additional powers to create, develop and enhance "**accountability officers**" and improve accountability and transparency. Municipalities across Ontario had supported the general principle to be provided with these additional powers.

Integrity Commissioner

The City of Toronto, and the City of Vaughan, have established the Office of the Integrity Commissioner. Other municipalities across the Greater Toronto Area have expressed an interest and desire to do so, e.g. Town of Mississauga. Town of Aurora and the Town of Markham. There are about 8 part time and/or contract Integrity Commissioners in Ontario now. Aurora has just hired an Integrity Commissioner here in York Region.

The integrity Commissioner for the City of Vaughan has reached a milestone in terms of roles, responsibility and protocol with the establishment of a Code of Ethics and Conduct having been updated and revised in November 2009. Other municipalities have expressed an interest in reviewing and adopting a similar Code of Ethics and Conduct.

Auditor General

The City of Vaughan has established the office of a city "auditor" and has developed a multi year audit plan. The City of Vaughan has established an Operational Audit Committee to review internal management and operation processes,

Lobbyist Registrar

The City of Vaughan in September 2009 has approved of a review of a lobbyist register.

Furthermore, the City of Vaughan has established a ratepayer association register recognizing ratepayer associations typically lobby or have more direct knowledge and interest with their respective communities.

Municipal Ombudsman

The legislature has advanced their intent and desire for local governments to follow good governance practices with the opportunity to provide the office of a municipal ombudsman to investigate administrative decisions/recommendations; investigations are to be conducted in private; no court review of proceedings and decisions of ombudsmen is final except on grounds of jurisdiction.

The City of Toronto has established the Office of a Municipal Ombudsman and for 2009 had received 1,000 complaints with a resolution rate of 90% as reported by Toronto Ombudsman Fiona Crean per the first report released in January 2010.

The City of Vaughan has been receiving numerous requests from residents resulting in "Information and Privacy" decisions, internal and external audits, and review of policies and practices. Further the Integrity Commissioner has indicated that many of the informal complaints received by her office have not been with her jurisdiction to investigate as they relate to administrative issues or City staff. The role of a municipal ombudsman would enhance accountability and transparency with the policies, practices, and procedures of the municipality all designed and aimed to serve the public. It would address frustration, allegations of unfairness, bias, and outdated policies and or practices.

The office of the ombudsman would promote and enforce the role of the municipal council. The role of Council as outlined in Section 224 of the Municipal Act (emphasis added):

- a) to represent the public and to consider the well being and interests of the municipality;

- b) to develop and evaluate the policies and programs of the municipality;
- c) to determine which service the municipality provides;
- d) to ensure the administrative policies, practices, and procedures and controllership;
- e) policies, practices and procedures are in place to implement the decisions of council;
- f) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- g) to maintain the financial integrity of the municipality;
- h) to carry out the duties of Council under this or any other Act.

Ombudsman-Accountability and Transparency

The Federal Government of Canada, Provincial Government Agencies, Boards, Commissions, and most notable institutions across Canada and throughout the world have established an office of the "ombudsman" to enhance clarity with enhanced accountability of their policies, practices and procedures, e.g. United Nations, Government of Canada, Province of Ontario, City of Toronto, Canada Post, Workers' Safety and Insurance Board, Hospital for Sick Kids, etc.

In summary, this recommendation is intended for the City of Vaughan to continue to show leadership when it comes to accountability and transparency. With each of the "**accountability officers**", and related decisions made, the City of Vaughan has been recognized in the past to be a leader, or amongst the top municipalities in doing so. The Municipal Act has recognized the need and importance to extend accountability and transparency with our policies, practices and procedures.

Background - Analysis and Options

Municipal Ombudsman- An International Perspective

The Local Government Act 1974 established the framework for local government to allow a process for the investigation of complaints from members of the public in England and Wales. Since 1988, members of the public have been able to complaint on their own behalf without the need for them to be referred by a councillor which had been the original practice.

The ombudsmen's jurisdiction covered all local government authorities including: town or municipalities, school admission panel and policies, police authorities, and a range of other bodies owned or under the control of local government.

Ombudsmen In Canada

British Columbia, Manitoba, Ontario, New Brunswick, Nova Scotia and the Yukon have introduced the office of the ombudsman. Additional provinces across Canada have expressed a desire to introduce the Office of the Ombudsman. In 2006, several provincial ombudsmen have had their mandates expanded to include numerous matters of local boards, agencies and institutions, e.g. patient concern resolution processes in hospitals and long term care facilities, child protection systems, and regional health authorities.

In many of these provinces the ombudsmen have become increasingly prevalent in retail, financial, commercial, travel and media sectors as well.

Ontario Ombudsman

In Ontario Andre Marin was appointed in April 2005 and has been reported to be re-appointed in 2010, to "modernize revitalize and re brand" the Ombudsman's office, i.e. the Ontario watchdog. Mr. Marin has argued the Ontario's Ombudsman Act is outdated and has not kept pace with developments in the oversight of the broader public sector delivering critical public services while significant developments have taken place elsewhere in Canada and internationally.

"There is a real danger that if the Bill goes forward unchanged; Ontario will be left with a system of municipal oversight plagued by inequity, inconsistency and ineffectiveness"

Andre Marin, Ontario Ombudsman Ontario Municipal Act-2006

This report and recommendations contained herein has been prepared in response to changes made by Bill 130, the Municipal Act, having received Royal Assent on December 20, 2006, and came into law, with minor exceptions, as of January 1, 2007, (Refer to Extract from Council meeting Minutes of April 23, 2007 attached).

These amendments signify the acceptance of municipalities as a level of government on the basis that municipalities, like other levels of government, institutions, and public corporations are capable of exercising their broad powers in a way that will safeguard the best interest of their residents, constituents or customers.

Sections 223.1 to 223.24 list the permissive authorities relating to the establishment of "accountability officers" including: integrity commissioner; ombudsman; auditor general; and lobbyist registrar.

Background-How has the landscape changed?

There have been developments which across Canada that has resulted in the recognition of the Government of Ontario to proceed with increased accountability and transparency:

- Government of Canada: Gomery Inquiry. Bill C2 Federal Accountability Act introduced containing sweeping changes to control mechanisms and the establishment and Conflict of interest and Ethics Commissioner and make the Public Sector Integrity Commissioner an agent of Parliament;
- City of Toronto: Bellamy Inquiry. The 244 recommendations addressed the need to address ethical lapses, process flaws, competence, communication and training issues. The key recommendation included the emphasis on ethics within the organization, ethical conduct should be regarded as among the most serious misconduct, and sanctions should include serious penalties.

Relationship to Vaughan Vision 2020/Strategic Plan

This report recommends a change from the priorities previously set by Council and the necessary resources have not been allocated.

Regional Implications

N/A

Conclusion

The ethical environment is changing with increased public expectations. Greater accountability and transparency is expected which means clearer standards of conduct are necessary. We should embrace the challenge and celebrate the new administration in the public interest.

Attachments

Council Extract Meeting Minutes of April 23, 2007.

Report prepared by:

Councillor Bernie DiVona, ext. 8339

Respectfully submitted,

Bernie DiVona
Councillor – Woodbridge/Vellore

Sandra Yeung Racco
Councillor – Thornhill/Concord

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF APRIL 23, 2007

Item 3, Report No. 18, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on April 23, 2007.

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INTEGRITY COMMISSIONER REPORT

The Committee of the Whole recommends:

- 1) That the position of an outside and independent part-time Integrity Commissioner be approved, in principle;
- 2) That a report be brought back 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;
- 3) That a maximum of \$100,000 be allocated in the 2007 budget and a maximum of \$200,000 be allocated in subsequent years' budgets to cover the costs of a part-time Integrity Commissioner and associated support staff and expenses;
- 4) 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;
- 5) That the Accountability and Transparency Committee be composed of the following members:
 - Mayor or designate
 - 1 Local and Regional Councillor
 - 1 Ward Councillor
 - 2 Members of the public (one with a legal background and one with ethics background is strongly recommended)
 - City Manager
 - City Solicitor
 - City Clerk;
- 6) That whereas the City of Kitchener established such a committee and whereas the local media plays a primary role in providing the public information in relation to local government, a member of the local media be part of the composition of the committee;
- 7) That Council consider an enforcement policy to the Code of Conduct and associated policy;
- 8) That the following report of the City Manager and the Commissioner of Legal and Administrative Services, dated April 16, 2007, be received; and
- 9) That the deputation of Mr. Richard Lorello, 235 Treelawn Boulevard, P.O. Box 927, Kleinburg, L0J 1C0, be received.

Recommendation

The City Manager and the Commissioner of Legal and Administrative Services in consultation with the Senior Management Team recommend that this report be received and that direction is requested regarding the options provided in this report.

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Economic Impact

The economic impact will depend on the direction Council provides.

Communications Plan

None at this time.

Purpose

This report has been prepared in response to Council direction of February 26, 2007 as follows:

- "2. That staff provide a report to the Committee of the Whole meeting of April 16, 2007 with respect to establishing a City of Vaughan, Office of the Integrity Commissioner by:
 - a) researching the position of Integrity Commissioner in other municipalities, including the City of Toronto;
 - b) outlining the Integrity Commissioner's role and responsibilities, framework and mandate;
 - c) determining the financial impact of establishing such an Office;
 - d) outlining all possible implementation options; and
 - e) outlining all required approvals.
3. That this motion and the staff report be provided to the Budget Strategic Planning Committees respectively."

Background – Analysis and Options

Bill 130, the *Municipal Statute Law Amendment Act, 2006*, received Royal Assent on December 20, 2006 and came into law, with minor exceptions, as of January 1, 2007. As a result, the *Municipal Act, 2001* has been significantly amended. These amendments signify the acceptance of municipalities as a level of government on the basis that municipalities, like other levels of government, are capable of exercising their broad powers in a way that will safeguard the best interests of their residents. One of the most notable changes is the addition of Part V.1 – Accountability and Transparency, which is intended to provide municipalities with enhanced accountability powers.

Part V.1 is made up of sections 223.1 to 223.24, which list the permissive authorities relating to the establishment of accountability officers with specific powers that the broad "governance" powers in the *Act* do not address. These officers include:

1. Integrity Commissioner
2. Ombudsman
3. Auditor General
4. Lobbyist Registrar

It should be noted that the corresponding *City of Toronto Act* provisions are virtually identical to the provisions in Part V.1 with the exception that the City of Toronto is required to establish these offices. They are not mandatory for the balance of the province's municipalities. The roles and responsibilities of these officers are set out in a chart attached as Attachment 1 along with related implications and comments.

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INTEGRITY COMMISSIONER

Sections 223.3 to 223.8 of Bill 130 set out the provisions dealing with the Integrity Commissioner. These specific provisions are attached to this report as Attachment 2. Generally, the Integrity Commissioner is responsible for performing functions assigned by the municipality related to the application of the Code of Conduct and any other procedures, rules and policies governing the ethical behaviour of members of Council and local boards of the municipality.

On February 26, 2007, Council directed that staff provide a report with respect to establishing an Office of the Integrity Commissioner for the City of Vaughan.

COMPARABLE MODELS

Federal Model

In 1994, Howard Wilson was named Canada's first Ethics Counsellor. He reported directly to the Prime Minister's Office and was responsible for advising Members of Parliament on the Conflict of Interest Code, the Parliamentary Code of Conduct, the Conflict of Interest and Post-Employment Code for Public Office Holders, the *Lobbyists Registration Act* and the Lobbyists' Code of Conduct. Since 1994, the Ethics Counsellor has investigated several high-profile cases, including:

- Conflict of interest allegations against Jean Chretien regarding his involvement in the Hotel Grand-Mere.
- Allegations against former public works minister Alfonso Gagliano for awarding contracts to advertising companies connected to his sons.
- Paul Martin's role in the Canada Development Corporation (CDC) during the tainted blood scandal.
- A finding that former solicitor general Lawrence MacAuley breached the conflict of interest rules by directing government projects and contracts to friends and family.

Pursuant to criticism that the position of Ethics Counsellor did not have sufficient authority, the government introduced a new ethics package in October 2002 that was to create an independent Ethics Commissioner who reported directly to Parliament. That bill was passed on March 21, 2004.

In April, 2004, Ottawa appointed Canada's first Ethics Commissioner, former McGill University president Bernard Shapiro. The mandate of the federal Ethics Commissioner is to:

1. **administer** the *Conflict of Interest Code for Members of the House of Commons* as well as the *Conflict of Interest and Post-Employment Code for Public Office Holders*;
2. **provide confidential opinions** to Members of the House of Commons and advice to Public Office Holders on any matter respecting their obligations under the Code to which they are subject; and
3. **conduct inquiries**, on behalf of Parliament, at the request of Members of Parliament or Members of the House of Commons, either as members or as Public Office Holders, on questions of compliance with either Code, as applicable.

The Office of the Ethics Commissioner also undertakes educational initiatives and information in order to inform its clients and the public at large. The Commissioner reports directly to Parliament although the Prime Minister has the final say in regard to penalties to be imposed against MPs who are found to be in conflict of interest.

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The Ethics Commissioner holds office for a term of five years and may be removed for cause by the Governor in Council on address of the House of Commons. He or she may be reappointed for one or more terms of up to five years each. The Office of the Ethics Commissioner has a staff of 34 and a budget for the 2006/2007 period of \$5,026,000.00.

Provincial Model

Many provinces have Ethics Commissioners or Conflict of Interest Commissioners, including Alberta, New Brunswick, British Columbia and Ontario. Their responsibilities are all similar in that they advise and review matters related to conflict of interest legislation. The following discussion focuses on Ontario's model.

The first Integrity Commissioner at the provincial level, the Honourable Gregory T. Evans, was appointed by a resolution of the legislative assembly in 1988. His authority was prescribed by the *Members' Conflict of Interest Act*, which was proclaimed on September 1, 1988, and was subsequently replaced by the *Members' Integrity Act, 1994*. The purpose of this change was to accentuate the positive and to eliminate the negative connotation associated with the term "conflict of interest". In addition, the change reflected an increased jurisdiction.

The mandate of the Integrity Commissioner for the Province of Ontario includes:

1. **advising** elected Members of Parliament on how the *Members' Integrity Act, 1994* affects them in their day-to-day activities. This includes reviewing the annual Financial Disclosure Statements filed by all members to ensure compliance with the *Act*.
2. **investigating** complaints received from one member regarding the activities of another member only. The *Act* does not provide for complaints to be received from the public. The reason for this is attributable to the small size of the office as well as the fact that opposition parties may be willing to investigate complaints with merit.
3. **reviewing expenses** of Ministers, Parliamentary Assistants, their staffs and Opposition Leaders and their staffs with respect to travel and hospitality. This role was set out in the *Cabinet Ministers and Opposition Leaders Expenses Review and Accountability Act, 2002*.

The Integrity Commissioner's responsibilities include preparing an annual report which summarizes advice given but does not disclose confidential information or information that could identify a person concerned. Following such an inquiry, the Commissioner's opinion and recommendations are confidential, but may be released by the member or with the member's consent.

According to the 2005/2006 Annual Report of the Office of the Integrity Commissioner, there were 446 requests for the Commissioner's opinion and recommendations. Examples of these requests are listed in the Annual Report and include:

Issue: A Minister has been asked by a constituent to write a letter of reference to the Ontario Power Authority.

Opinion: Section 25.3 of the *Electricity Act, 1998* specifically states that the Ontario Power Authority is not an agent of Her Majesty for any purpose, despite the *Crown Agency Act*. On this basis, a Minister writing a letter of reference on constituency letterhead for purposes of a constituent's application to the Ontario Power Authority for conservation funding does not place the member in violation of the *Members' Integrity Act*.

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- Issue:** A Minister has been asked to speak at an event and the event organizers have inquired as to the Minister's favourite charity for purposes of a donation as a "thank you" to the Minister.
- Opinion:** The Minister can provide the name of the charity, however, as the donation is not made by the Minister personally, as MPP or as Minister, the donor's name should be that of the event organizer.

There was only one formal complaint made by a member alleging that another member breached a provision of the *Members' Integrity Act*. This complaint involved a member of the Executive Council who, after an investigation, was found to have breached the *Act*. The recommended penalty in the Commissioner's report was a reprimand. Following release of the report and debate on the issue of penalty, the member was reprimanded.

The provincial Integrity Commissioner's term is for five years and he or she may be reappointed for a further term or terms. The Office of the Integrity Commissioner operates with a staff of four in addition to the Commissioner with an annual expenditure of \$551,339.11 (2005/2006 figure). This includes the Commissioner's annual salary which was \$154,813.76 for the 2005/2006 period.

City of Toronto

After appointing a selection panel made up of three members of Council to recommend a preferred candidate, the City of Toronto appointed its first Integrity Commissioner, David J. Mullan, on July 21, 2004 who then commenced his term on September 1, 2004. Upon establishing the office of the Integrity Commissioner, the City of Toronto looked to the provincial model and subsequently sought enabling legislation from the province for further powers and authority. This resulted in the codification of the Integrity Commissioner provisions in the *City of Toronto Act, 2006*, which received Royal Assent on June 12, 2006 and came into effect on January 1, 2007. These provisions are virtually identical to the provisions in the *Municipal Statute Law Amendment Act, 2006*.

Toronto's Integrity Commissioner has four distinct roles:

- 1. Advisory:** Providing 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:** Having the power 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:** Determining 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:** Publishing 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.

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In his annual report covering the sixteen month period from September 1, 2004 to December 31, 2005, Mr. Mullan detailed the particulars of his responsibilities. He stated that he received twenty-one formal complaints, responded to 66 requests for advice and handled 147 citizen and staff inquiries. He was also a member of an Advisory Task Force set up to consider improvements to the Code of Conduct Complaint Protocol. He provided guidance on policy issues involving ethics and integrity, reporting to Council on various corporate policies and informally interacted with Staff in the development and assessment of such policies.

Mr. Mullan's Annual Report for the period from September 1, 2004 to December 31, 2005 includes examples of advice provided to Council members. This includes:

Question: I am concerned as to whether I have a conflict of interest as defined in the *Municipal Conflict of Interest Act*. Will the City pay my account for seeking legal advice and, if not, can I charge the lawyer's fees against my office expenses?

Answer: The City will not reimburse you for the cost of seeking advice and you cannot charge the fees to your account. You must pay the account out of your own pocket.

Question: May I use my expense budget to make a contribution towards the production of a newsletter by a community group?

Answer: Yes. It is a legitimate office expense under the heading "Sponsorships and Donations". However, there is an annual limit of \$600 per organization and it is inappropriate for your office to pay directly any bills associated with the newsletter.

The Annual Report also discusses the type of complaints received by the City Integrity Commissioner. For example, a complaint was filed by a member of the public alleging inappropriate conduct on the part of a Member of Council during the proceedings of City Council. Mr. Mullan declined jurisdiction on the basis that the City's procedural by-law placed responsibility on the Chair for maintaining order and preserving the decorum of meetings of Council. It was determined that this was an area where Council and its Committees were responsible for self-policing.

The Annual Report further lists one of the more controversial aspects of the Integrity Commissioner's jurisdiction as being his investigation of complaints under the "discreditable conduct" clause of the Code of Conduct. These complaints include allegations that Members of Council have engaged in harassing, discriminatory and otherwise inappropriate intemperate behaviour in their interactions with constituents. Mr. Mullan suggests that the broad provision in the Code of Conduct which makes it an offence for a Councillor not to serve constituents in a conscientious and diligent manner invites all manners of complaints about the way in which Councillors are performing and the choices that they have made on various issues. Unless such complaints give rise to more specific concerns, Mr. Mullan has stated that issues of performance should be left to the ballot box. "For the Integrity Commissioner to become embroiled as a referee of the way in which Members of Council are fulfilling their responsibilities would risk the credibility of the office. It is not generally appropriate for the Integrity Commissioner to descend into the political fray." (Annual Report of the Integrity Commissioner dated May 8, 2006, page 11).

The City of Toronto allocated \$200,000.00 for the annualized budget of the Integrity Commissioner's office on the assumption that the office would be part-time. Mr. Mullan's initial contract was for one year however his term was later extended for an additional two years which expires in August 2007. According to the Public Sector Salary Disclosure 2007, Mr. Mullan's salary for 2006 was \$109,886.75 for the part-time position. The office budget also includes funds for one part-time administrative assistant.

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It should be noted that Toronto's Integrity Commissioner is an employee of the City. This has resulted in criticism by some on the basis that it does not ensure the complete independence of the position. However, it should be noted that Toronto's Integrity Commissioner does not report to the Mayor or City Manager but to Council as a whole. It is likely that he was made an employee for Indemnity purposes. The *Municipal Act* does not require Integrity Commissioners to be municipal employees.

Other Municipalities

The City of Hamilton

On February 28, 2007, Hamilton City Council directed staff to review and report back with respect to establishing an Office of the Integrity Commissioner for the City of Hamilton, using the model adopted by the City of Toronto. The report was to outline a suggested mandate, financial implications and implementation plan to enable operation of the office within three months. A budget of \$200,000.00 was suggested, following Toronto.

On March 28, 2007, Council directed that an Accountability and Transparency Sub-Committee be struck to review the provisions in Bill 130 respecting the establishment of an Office of the Integrity Commissioner and other options to enhance accountability and transparency in the City of Hamilton and to make recommendations to Council. The sub-committee will be composed of the Mayor, four members of Council and four members of the community selected at large. The selection of the four members of the community is to be completed by May 15, 2007.

The minutes from Council's meeting of March 28, 2007 request review of the following:

- i) Possibility of locating the Integrity Commissioner at the Province of Ontario.
- ii) What other senior levels of government are doing with respect to breach of code of conduct matters?

Finally, Council directed that the establishment of a City of Hamilton Integrity Commissioner's mandate be expanded to provide jurisdiction over complaints respecting City of Hamilton staff. It must be determined if this is permitted by the legislation.

It is expected that the sub-committee will report back to Council in a year.

The City of Kitchener

On January 9, 2006, Council requested staff to report as to how an Integrity Commissioner position might be incorporated into the City's existing corporate structure. On August 21, 2006, Council adopted a recommendation instructing staff to submit a report in January 2007 outlining the structure and mandate of a Committee that will develop comprehensive policies, procedures and/or by-laws to ensure accountability and transparency of the operations of the City. On January 29, 2007, Council directed that an Accountability and Transparency Committee be established. This Committee will review the City's current policies/practices pertaining to the Code of Conduct, confidentiality, accountability and transparency. It will also make recommendations to Council regarding the appointment of an Integrity Commissioner, Ombudsman and Auditor General.

The composition of the Committee will be:

- The Mayor or designate
- A Councillor
- 2 members of the public
- A representative of a local news media company

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- The Chief Administrative Officer or designate
- The General Manager of Corporate Services
- The City Solicitor
- The City Clerk

The City of Kitchener has set a goal of having a comprehensive Accountability and Transparency policy in place by Spring 2008.

Survey of Other Municipalities

A mass email was circulated by Staff to members of the Municipal Law Departments Association of Ontario regarding the possible establishment of Integrity Commissioner Offices in other municipalities. Replies received from York Region, Caledon, Windsor, Oshawa, Brampton, Newmarket and Mississauga indicated that they were not yet considering this option. Some municipalities have provided general reports to their Councils on the amendments contained in Bill 130 with the comment that further reports providing recommendations for policies regarding accountability and transparency will be forthcoming.

ROLE AND RESPONSIBILITIES, FRAMEWORK AND MANDATE

Aside from investigating complaints received from Council, members of Council, staff or members of the public, an Integrity Commissioner can provide informal advice and education to Council or members of Council in relation to the Code of Conduct or other accountability policies. Further, he/she may assist in the review and revision of the City's current Code of Conduct and any other policies governing ethics, accountability and transparency. Attachment 3 sets out a brief overview of Vaughan Council's Code of Conduct.

The *Municipal Conflict of Interest Act* has jurisdiction over complaints regarding direct and indirect pecuniary interests on the part of a Councillor and a narrow band of relatives. An Integrity Commissioner may provide guidance regarding non-pecuniary interests.

It may also be possible to have the Integrity Commissioner appointed as an Investigator pursuant to section 239.2 to handle investigations related to whether a municipality has complied with the *Municipal Act* provisions governing meetings (section 239) or its procedural by-law (section 238(2)).

Qualifications and recruitment

The qualifications for the position of Integrity Commissioner may 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
- Must possess personal and professional integrity along with good interpersonal skills and discretion
- The ability to interpret provisions of various statutes, regulations, policies

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- 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

Other municipalities have struck committees comprised of various parties, including Council members, to make recommendations for this appointment.

Penalties

Generally, the Integrity Commissioner would report to Council upon completion of an investigation and make recommendations regarding any penalty. The Act provides that the penalty may range from a reprimand up to and including a suspension of pay for any period to a maximum of 90 days.

Delegation/Appeals

Council has the authority to delegate decision-making regarding penalties to the Integrity Commissioner. This may entail an appeal process to Council. If Council retains the decision-making authority, there is no statutory avenue of appeal. Application for judicial review is available as with all Council decisions.

Term

The federal and provincial positions are for a term of five years. A length of term exceeding the term of government and security of tenure provide greater public confidence in objectivity.

IMPLEMENTATION OPTIONS

It is an option that Council may strike a committee or direct staff to further review and report with final recommendations based on Council input.

As another option, Council may direct that the Office of the Integrity Commissioner be established and that a report be brought back regarding implementation.

A third option is to maintain the status quo.

The position of Integrity Commissioner may be a municipal employee or independent contractor on a full-time or part-time basis.

As an employee, the Integrity Commissioner would be indemnified under the City's insurance policy. Any independent contractor will likely request indemnification and the City's insurer has advised that this coverage is available for an additional fee.

It must be determined if the City will provide office space and an administrative assistant, if this will be provided elsewhere or by the Integrity Commissioner retained with the costs billed to the City.

The budget of the Integrity Commissioner could include funds for advice of external counsel.

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Complaints Procedure

Should Council wish to proceed, an implementation step is to develop procedures regarding various matters, including informal versus formal complaints, anonymous complaints, inquiries and requests for advice. The development of these procedures can be done in consultation with an Integrity Commissioner.

FINANCIAL IMPLICATIONS

Should an Integrity Commissioner be retained on a per diem basis, based on current Provincial Tribunal per diems published, the rate could reach approximately \$700 per diem. Given a possible 230 working days per year (365 days minus weekends, statutory holidays, four weeks holidays) multiplied by \$700.00 per diem totals \$161,000.00 maximum. It is difficult to estimate the number of days an Integrity Commissioner would actually be engaged in complaint investigation.

Any additional fee for insurance coverage has yet to be determined. Initial costs for office set up and an administrative assistant should be included, along with funds for advice from external counsel. An annual budget of \$250,000.00 is estimated based on the maximum number of days being utilized. If, for example, 115 days were utilized, the annual budget estimate could be \$170,000.00.

If an Integrity Commissioner is a municipal employee, following the City of Toronto model with an annual part-time salary of approximately \$110,000.00, the annual budget including office space, administrative staff and funds for advice from external counsel would be estimated at \$200,000.00 on an annual basis.

REQUIRED APPROVALS

Should Council wish to proceed, Council must enact a by-law appointing an Integrity Commissioner and setting out authorities, term, salary, procedures and any other matters. A procedure for complaints must also be approved by Council.

Relationship to Vaughan Vision

This report is consistent with the priorities in the Vaughan Vision.

Regional Implications

None.

Conclusion

This report is provided for information and further Council direction regarding the options is requested.

Attachments

- Attachment 1: Outline of New Accountability Officers provided for in Part V.1 of the *Municipal Act, 2001*
- Attachment 2: Excerpt from Bill 130 (C. 32, S.O. 2006) *Municipal Statute Law Amendment Act, 2006*

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF APRIL 23, 2007

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- Attachment 3: Code Of Ethics and Conduct – Members Of Council
Appendix I - Vaughan Code of Ethics and Conduct for Members of Council (City of
Vaughan Policy Manual: Policy No. 01.06 (adopted March 25, 1996))
Appendix II - Summary – General Principles for Codes of Ethics and Conduct for
Members of Council

Report prepared by

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(A copy of the attachments referred to in the foregoing have been forwarded to each Member of Council and a copy thereof is also on file in the office of the City Clerk.)