

COMMITTEE OF THE WHOLE – APRIL 16, 2007

INTEGRITY COMMISSIONER REPORT

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.

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.

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.

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*.

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.

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.

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
- 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
- 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.

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*

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

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Respectfully Submitted,

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City Manager

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Commissioner of Legal and Administrative
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Attachment 1

**Outline of New Accountability Officers
Provided for in Part V.1 of the *Municipal Act, 2001***

POSITION	ROLES AND RESPONSIBILITIES	IMPLICATIONS	COMMENTS
<p>Integrity Commissioner</p>	<p>-to administer the Code of Conduct and other rules in place governing ethical conduct for members of Council and/or local boards</p> <p>-to conduct inquiries at the request of Council/local Board, a member of Council/local Board or a member of the public about whether a member of Council or local Board has contravened the code of conduct</p> <p>-to recommend penalties for contraventions of the code of conduct to Council or local Board, as applicable, and in accordance with s. 223.4(5) of the <i>Municipal Act</i></p> <p>-may provide periodic reports to Council summarizing his or her activities which shall be made public</p>	<p>-may be shared by any number of municipalities</p> <p>-can be part-time or full-time</p> <p>-can be paid per diem or on a salary basis</p> <p>-requires minimal support staff</p>	<p>-the power to appoint this position is discretionary</p> <p>-Vaughan has a Code of Conduct</p> <p>-it is likely that some municipalities will establish a Code of Conduct without appointing an Integrity Commissioner to see what level of compliance can be achieved on a voluntary basis</p>
<p>Auditor General</p>	<p>-responsible for assisting Council in holding itself and its administrators accountable for the quality of stewardship over public funds and for achievement of value for money in municipal operations (ie. Conducts financial, operational, compliance, information systems, forensic and other special reviews of City departments as Council may specify)</p> <p>-shall not undertake activities that are the responsibility of the external municipal auditor as set out in the <i>Municipal Act</i>, which includes annual audits of the accounts and transactions of the municipality and expressing an opinion on the financial statements based on the audits</p>	<p>-requires significant budget and staff (ie. City of Toronto's Auditor General's budget for 2006 was \$3,881,262.00 with a staff of 26 professionals and 3 administrative staff; the City of Ottawa's budget for 2006 was \$1,699,000.00 with a staff of 7 professionals and one administrative assistant)</p> <p>-audit costs in Canadian municipalities range from 0.07% to 0.14% of municipal operating budgets (includes Toronto, Calgary, Ottawa, Winnipeg and Edmonton)</p>	<p>-the power to appoint this position is discretionary</p> <p>-Vaughan has an Audit Committee and an internal auditor</p>

		<p>-follow up of audit recommendations involve significant resources</p> <p>-may generate cost savings by increasing revenues, reducing costs, improving internal controls and operational efficiencies, and enhancing protection of City assets</p>	
Ombudsman	<p>-to investigate decisions or recommendations made or acts done or omitted in the course of the administration of the municipality/local boards and municipally-controlled corporations</p> <p>-investigations are to be conducted in private</p> <p>-may not investigate any matter where there is a right of appeal or a right to apply for a hearing to any court or tribunal until that right of appeal or objection has been exercised or after any time to exercise that right has expired</p> <p>-may not investigate decisions, recommendations, acts or omissions of any person acting as legal adviser to municipality or counsel to any legal proceedings</p> <p>-to report to Council and make recommendations based on findings of inquiry</p> <p>-decisions, recommendations, acts or omissions of the ombudsman are final (subject to issues of jurisdiction)</p>	<p>-may be shared by any number of municipalities</p> <p>-may duplicate roles of Councillors, City Manager, and/or senior management in dispute resolution</p> <p>-may conflict with Collective Agreement</p>	<p>-the power to appoint this position is discretionary</p> <p>-only responsible for responding to complaints, thus acting in limited role as a mediator</p>
Lobbyist Registrar	<p>-to administer the lobbyist registry in a manner assigned by the municipality</p> <p>-to conduct inquiries at the request of Council, a member of Council or a member of the public about compliance with the registration system or code of conduct established for persons who lobby public office holders</p> <p>-may provide reports to Council in respect of an inquiry which shall be made public</p>	<p>-may be shared by any number of municipalities</p>	<p>-the power to appoint this position is discretionary</p> <p>-it is difficult to define "lobbying"</p>

Attachment 2

Excerpt from Bill 130 (C. 32, S.O. 2006) *Municipal Statute Law Amendment Act, 2006.*

Integrity Commissioner

223.3 (1) Without limiting sections 9, 10 and 11, those sections authorize the municipality to appoint an Integrity Commissioner who reports to council and who is responsible for performing in an independent manner the functions assigned by the municipality with respect to,

(a) the application of the code of conduct for members of council and the code of conduct for members of local boards or of either of them;

(b) the application of any procedures, rules and policies of the municipality and local boards governing the ethical behaviour of members of council and of local boards or of either of them; or

(c) both of clauses (a) and (b).

Powers and duties

(2) Subject to this Part, in carrying out the responsibilities described in subsection (1), the Commissioner may exercise such powers and shall perform such duties as may be assigned to him or her by the municipality.

Delegation

(3) The Commissioner may delegate in writing to any person, other than a member of council, any of the Commissioner's powers and duties under this Part.

Same

(4) The Commissioner may continue to exercise the delegated powers and duties, despite the delegation.

Status

(5) The Commissioner is not required to be a municipal employee.

Inquiry by Commissioner

223.4 (1) This section applies if the Commissioner conducts an inquiry under this Part,

(a) in respect of a request made by council, a member of council or a member of the public about whether a member of council or of a local board has contravened the code of conduct applicable to the member; or

(b) in respect of a request made by a local board or a member of a local board about whether a member of the local board has contravened the code of conduct applicable to the member.

Powers on inquiry

(2) The Commissioner may elect to exercise the powers of a commission under Parts I and II of the *Public Inquiries Act*, in which case those Parts apply to the inquiry as if it were an inquiry under that Act.

Information

(3) The municipality and its local boards shall give the Commissioner such information as the Commissioner believes to be necessary for an inquiry.

Same

(4) The Commissioner is entitled to have free access to all books, accounts, financial records, electronic data processing records, reports, files and all other papers, things or property belonging to or used by the municipality or a local board that the Commissioner believes to be necessary for an inquiry.

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality 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.

Same

(6) The local board may impose either of the penalties described in subsection (5) on its member if the Commissioner reports to the board that, in his or her opinion, the member has contravened the code of conduct, and if the municipality has not imposed a penalty on the member under subsection (5) in respect of the same contravention.

Duty of confidentiality

223.5 (1) The Commissioner and every person acting under the instructions of the Commissioner shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties under this Part.

Exception

(2) Despite subsection (1), information may be disclosed in a criminal proceeding as required by law or otherwise in accordance with this Part.

Section prevails

(3) This section prevails over the *Municipal Freedom of Information and Protection of Privacy Act*.

Report to council

223.6 (1) If the Commissioner provides a periodic report to the municipality on his or her activities, the Commissioner may summarize advice he or she has given but shall not disclose confidential information that could identify a person concerned.

Report about conduct

(2) If the Commissioner reports to the municipality or to a local board his or her opinion about whether a member of council or of the local board has contravened the applicable code of conduct, the Commissioner may disclose in the report such matters as in the Commissioner's opinion are necessary for the purposes of the report.

Publication of reports

(3) The municipality and each local board shall ensure that reports received from the Commissioner by the municipality or by the board, as the case may be, are made available to the public.

Testimony

223.7 Neither the Commissioner nor any person acting under the instructions of the Commissioner is a competent or compellable witness in a civil proceeding in connection with anything done under this Part.

Reference to appropriate authorities

223.8 If the Commissioner, when conducting an inquiry, determines that there are reasonable grounds to believe that there has been a contravention of any other Act or of the *Criminal Code* (Canada), the Commissioner shall immediately refer the matter to the appropriate authorities and suspend the inquiry until any resulting police investigation and charge have been finally disposed of, and shall report the suspension to council.

ATTACHMENT 3

CODE OF ETHICS AND CONDUCT – MEMBERS OF COUNCIL

Subsection 223.2(1) of Part V.1 of the *Municipal Act, 2001*, as amended by Bill 130, grants permissive authority to a municipality to establish a code of conduct for members of Council and local boards. Vaughan's current Code of Ethics and Conduct for Members of Council is included in this Attachment as Appendix I. In addition a Summary of General Principles which may be appropriate for recognition or inclusion in a code of conduct governing elected officials is included in this Attachment as Appendix II.

The accountability and transparency measures set out in Bill 130, and the recent focus on the importance of accountability and transparency of government operations at both the provincial and federal government level, arose primarily as a result of a few high profile public inquiries or commissions to investigate circumstances involving alleged wrong-doing in relation to government contract, programs or policies. Included among these inquiries was the Bellamy Inquiry into Toronto computer leasing and other contracts.

Vaughan adopted its code of conduct for Members of Council in 1996. However, some municipalities have not adopted a code of conduct for councillors, including York Region, Mississauga and Ottawa. The City of Toronto has recently updated its Code of Conduct for Members of Council. Both the Government of Canada and the Province of Ontario have recently carried out a review of accountability and transparency issues, and subsequently passed legislation and/or adopted Values and Ethics Codes related to the public service. The Province has the *Members' Integrity Act* with the Integrity Commissioner to assist in governing and enforcing conduct requirements for Members of the Ontario Legislature. At the federal level, there also is a Federal Integrity Official.

Under separate cover the Mayor and Members of Council are being provided with a Comparison Chart including samples of Codes of Ethics and/or Conduct for Members of Council adopted over the years by other municipalities. Only the City of Toronto Code of Conduct – Members of Council has been recently updated.

APPENDIX I to ATTACHMENT 3

VAUGHAN CODE OF ETHICS AND CONDUCT FOR MEMBERS OF COUNCIL

(CITY OF VAUGHAN POLICY MANUAL: POLICY NO. 01.06 (adopted March 25, 1996))

1. A councillor believes in the dignity and worth of the services rendered by local government. He/she also has a deep sense of his/her own social responsibility as a public trustee and is confident that he/she can serve to the advantage of the municipality.
2. A councillor recognizes that the chief function of local government at all times is to serve the best interests of all the people in the municipality.
3. As an elected official, a municipal councillor has a responsibility to carry out his/her duties to the best of his/her ability and to be accountable for his/her decisions and actions.
4. A councillor is governed by the highest ideals of honour and integrity in all his/her public and personal relations.
5. The decisions that a councillor makes will be based on the proper best interests of the municipality, without consideration of personal gain. He/she believes that personal glorification or profit secured through the misuses of his/her position or through misuse of public time is dishonest and therefore unacceptable.
6. A councillor recognizes that the decision-making authority for the municipality lies with the council, not an individual councillor. Within council, a councillor will make his/her position known, and will listen to and respect those whose opinions differ from his/her own. Further, councillors recognize that once a majority decision has been reached, it becomes council's decision.
7. A councillor will not violate the public trust by discussing matters of municipal concern in an (in)appropriate place, or in an unsuitable manner.
8. A councillor recognizes the importance of cooperation, and endeavours to earn the respect and confidence of the public, the administrative staff, as well as his/her colleagues.
9. A councillor strives to create an atmosphere within council conducive to solving the many problems that they will be required to address. He/she is willing to work as part of a team; to contribute constructively; to compromise when necessary; and to share the knowledge of his/her experience with new councillors.

APPENDIX II TO ATTACHMENT 3

SUMMARY GENERAL PRINCIPLES FOR CODES OF ETHICS AND CONDUCT FOR MEMBERS OF COUNCIL

Fundamental Principles of Public Service

The fundamental principles of public service set out immediately below have been emphasized by both the Government of Canada and Province of Ontario in recent reviews of accountability in government and the development of revised policies or rules:

- **accountability**
- **non-partisanship**
- **competency**
- **professionalism**

A. General Principles for Codes of Ethics and Conduct

Codes of Ethics and Conduct may:

- include broader ethical considerations;
- go beyond the minimum standards of behaviour and set out higher ideals and;
- be written in plain language that can be understood by the public;
- reflect the difference in the roles of councillors and staff without setting different ethical standards;

B. Training, Ongoing Education, Monitoring

1. Training on Codes of Ethics and Conduct is important for councillors.
2. Councillors should be encouraged to discuss ethical issues that arise from time to time with peers or colleagues and, if one has been appointed by the municipality, the Integrity Commissioner.
3. Reviews of Codes of Ethics and Conduct should be carried out to ensure that they provide appropriate guidance.
4. Awareness of the Codes of Ethics and Conduct among all councillors should be promoted and guidance provided in complying with the Codes.

C. Relations between Councillors and Staff

1. Elected officials should understand and honour their roles and responsibilities, and act only within them.
2. The Mayor in Council meetings, a Committee chair, or anyone else in a formal or informal leadership role should intervene in instances of uncivil behaviour and politely remind the person responsible of his or her duty to be civil.
3. Councillors should not ask staff to perform personal services for them.
4. Councillors should not attempt to influence staff behaviour by direct or indirect coercion of any kind, including intimidation, bullying or alluding to future promotion or employment prospects.
5. Councillors should not ask staff to engage in partisan political activities for them.

D. Conflict of Interest and Apparent Conflict of Interest – Non-pecuniary

1. Rules about non-pecuniary conflicts of interest may form part of a Code of Ethics and Conduct. Members of Council and local boards are governed by the *Municipal Conflict of Interest Act* respecting direct and indirect pecuniary interests.
2. Councillors should take steps to avoid both real and apparent conflicts of interest and for assistance Councillors may seek guidance from an Integrity Commissioner, if appointed.

E. Specific Conflicts of Interest

1. Councillors should not use their positions to further their private interests.
2. Councillors should not concurrently accept employment by an outside interest that is either incompatible with or in conflict with their official duties.
3. Councillors should not ask City employees to perform work that is unrelated to City business during office hours.
4. Councillors should not divulge confidential information to those not entitled to it.
5. Councillors should not access confidential information if not required to do so for work purposes.

G. Preferential Treatment

Elected officials should take all necessary steps to avoid preferential treatment or the appearance of preferential treatment for friends or family.

H. Doing Business with the City

1. The municipality should make its codes of conduct available to ensure there is knowledge about the ethical conduct involved in doing business with the City.

I. Business Related Matters

1. The municipality may review the acceptance of gifts, hospitality or other benefits, including the establishment of a registry. The definition of value and other criteria for acceptable gifts could be established in consultation with an integrity commissioner.
2. Where councillors are engaged in the conduct of city business in the course of their duties, expenses should be reimbursed by the City.
3. The municipality may have a policy on when it is appropriate for councillors to attend charity events.