

**Report to/Rapport au :**

**Governance Renewal Sub-Committee  
Sous-comité du renouvellement de la gouvernance**

**Finance and Economic Development Committee  
Comité des finances et du développement économique**

**and Council / et au Conseil**

**April 25, 2013  
25 avril 2013**

**Submitted by/Soumis par : M. Rick O'Connor, City Clerk and Solicitor / Greffier  
municipal & chef du contentieux**

**Robert Marleau, Integrity Commissioner / Commissaire d'intégrité**

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**CITY WIDE / À L'ÉCHELLE DE LA VILLE**

**Ref N°: ACS2013-CMR-CCB-0028**

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**SUBJECT: CODE OF CONDUCT FOR MEMBERS OF COUNCIL AND GIFTS  
REGISTRY**

**OBJET : CODE DE CONDUITE POUR LES MEMBRES DU CONSEIL ET  
REGISTRE DES CADEAUX**

**REPORT RECOMMENDATIONS**

**That the Joint Governance Renewal Sub-Committee and Finance and Economic  
Development Committee recommend Council:**

- 1. Approve the Code of Conduct for Members of Council listed in Document 1, as  
described in this report and including the following elements:**
  - a. General Integrity;**
  - b. Confidential Information;**
  - c. Conduct at Council/Committee Meetings;**
  - d. Discrimination and Harassment;**
  - e. Improper Use of Influence;**

- f. **Use of Municipal Property;**
  - g. **Conduct Respecting Staff;**
  - h. **Expenses;**
  - i. **Conduct Respecting Lobbying;**
  - j. **Gifts, Benefits and Hospitality;**
  - k. **Election-Related Activity; and**
  - l. **Compliance with the Code;**
2. **Approve that the effective date for the Code of Conduct for Members of Council be July 1, 2013; and**
  3. **Receive the Integrity Commissioner's Complaint Protocol for the Code of Conduct as described in this report and listed in Document 3.**

### **RECOMMANDATIONS DU RAPPORT**

**Que le Sous-comité de renouvellement de la gouvernance et le Comité des finances et du développement économique, en réunion conjointe, recommande au Conseil d'approuver ce qui suit :**

1. **Approbation du Code de conduite pour les membres du Conseil inclut dans le document 1, tel que décrit dans le présent rapport et comprenant les points suivants :**
  - a. **Intégrité;**
  - b. **Information privilégiée;**
  - c. **Conduite lors des réunions du Conseil ou d'un comité;**
  - d. **Discrimination et harcèlement;**
  - e. **Abus de pouvoir;**
  - f. **Utilisation de ressources et de biens municipaux;**
  - g. **Conduite à l'égard du personnel;**
  - h. **Dépenses;**
  - i. **Conduite à l'égard du lobbying;**

- j. Cadeaux, avantages et invitations;
  - k. Activités liées aux élections;
  - l. Respect du Code de conduite;
2. Approbation de la date d'entrée en vigueur du Code de conduite des membres du Conseil au 1<sup>er</sup> juillet 2013; et
  3. Réception du protocole de plaintes du commissaire à l'intégrité pour le Code de conduite tel que décrit dans le présent rapport et inclus dans le document 3.

#### EXECUTIVE SUMMARY

***[T]o the extent there is an accountability framework, I think its overarching purpose is to both instil and ensure public confidence. And by saying that, it also puts an emphasis on not just what standards are complied with, but the appearance of that compliance to the public and of course, in advancing public interest goals at the end of the day, not the goals or interests of the individuals who might hold office from time-to-time.<sup>1</sup>***

*Dean Lorne Sossin, Osgoode Law School*

As part of the 2010-2014 Governance Review, City Council endorsed an Accountability Framework that includes a Code of Conduct for Members of Council, an Integrity Commissioner, public disclosure of office expenses, and a low-cost lobbyist registry and gifts registry. This is in addition to the *Accountability and Transparency Policy*, a *Delegation of Powers Policy*, the application of the statutory provisions related to the Office of the Auditor General and the creation of the position of Meetings Investigator to address complaints related to closed meetings adopted by Council in November 2008, to meet the mandatory requirements under the revised *Municipal Act, 2001*.

Members of Council have been disclosing their expenses monthly since January 2011 and have approved specific guidelines for this disclosure, including the level of detail that must be provided for certain expenses. City Council established the Lobbyist Registry and created the office of Integrity Commissioner on July 11, 2012. This report recommends a Code of Conduct for Members of Council and a Gifts Registry. A companion report recommends a Council Expense Policy and a Community, Fundraising and Special Events Policy.

On August 29, 2012, the City Clerk and Solicitor announced the appointment of Mr. Robert Marleau as the City's Integrity Commissioner. Mr. Marleau has 32 years of parliamentary experience, including 13 years spent as the Clerk of the House of Commons. He has also served as the interim Privacy Commissioner of Canada and as the Information Commissioner of Canada.

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<sup>1</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); ref. 5584.

The Integrity Commissioner is a statutory officer whose role is outlined in the *Municipal Act, 2001*. In addition to the statutory role, the Integrity Commissioner has also been delegated the legislative responsibilities of the City's Meetings Investigator and Lobbyist Registrar.

The Integrity Commissioner was specifically tasked with creating a Code of Conduct for Members of Council, and providing input into any related policies, including the Council Expense Policy and Gifts Registry. Following Council adoption of these policies, the Integrity Commissioner will oversee their implementation, providing advice to Members of Council, issuing interpretations and, where necessary, investigating complaints and recommending sanctions.

The Integrity Commissioner and City staff have worked together to develop recommendations on the remaining pieces of the Accountability Framework, namely the Code of Conduct for Members of Council, the Gifts Registry, the Council Expense Policy and a Community, Fundraising and Special Events Policy, for Council's consideration.

Although the Code of Conduct and Gifts Registry are within the jurisdiction of the Integrity Commissioner and the Council Expense Policy and the Community, Fundraising and Special Events Policy will be administered by the City Clerk and Solicitor and the Deputy City Clerk, all of the recommendations have been developed jointly, to be consistent with one another and with the other elements of the Framework.

As well, the Integrity Commissioner consulted with all twenty-four Members of Council.

### *The Purpose of a Code of Conduct*

***The ethical culture of an organization is the set of values operating within it. Those values constitute the first line of defence against unethical behaviour, and they exert by far the most powerful influence. In any organization, there is a formal ethical culture and an informal ethical culture. Formal culture is written policy. Informal culture is learned from observing the behaviour of others—and it usually prevails. Ideally, formal culture and informal culture are the same, and the values set down on paper reflect the real values at work in the organization every day, the values that people respect and have embraced<sup>2</sup>.***

*The Honourable Madame Justice Denise E. Bellamy*

A code of conduct establishes a model of ethical behaviour that is expected of a particular group. One of the first steps in developing a code of conduct for elected officials is to understand why having such a code is necessary when there are already a number of pieces of legislation governing the ethical expectations of Members of Council. The Conflict of Interest Code for Members of the House of Commons provides a good overview of the purpose of a code of conduct for elected officials; namely that a code of conduct for elected officials should be established:

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<sup>2</sup> The Honourable Madame Justice Denise E. Bellamy, Report on the Toronto Computer Leasing Inquiry-Toronto External Contracts Inquiry, Volume 2, 'Good Government', 2005, Toronto, p. 26.

- to maintain and enhance public confidence and trust in the integrity of Members as well as the respect and confidence that society places in the institution;
- to demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case;
- to provide for greater certainty and guidance for Members in how to reconcile their private interests with their public duties and functions; and
- to foster consensus among Members by establishing common standards and by providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan adviser.

*Best Practices for Codes of Conduct for Elected Officials*

***In my discussions and review of the literature, I don't think it's fair to say there is a jurisdiction out there that is the gold standard...<sup>3</sup>***

*Dean Lorne Sossin, Osgoode Law School*

Unlike other professions, there is no generally-accepted code of conduct for elected officials. Staff notes that the *Municipal Act, 2001* also does not provide direction with respect to the content of a code of conduct for elected officials. That being said, a number of codes of conduct for elected officials have been established for various levels of government over the years. These codes take different forms: some have been developed following actual or perceived breaches of ethics (e.g. the codes for Toronto, Mississauga and Brampton); others have been established because of the broader belief that a transparent ethical framework is an integral part of government.

Municipal experts agree that it is better to put an ethics regime in place before a problem comes to light, as it is then a reflection of the broader values and culture of the organization and not as a response to specific ethical breaches. In that respect, the City of Ottawa has the advantage over a number of other Ontario municipalities that already have established Codes of Conduct.

As directed by Council and the Governance Renewal Sub-Committee, staff has reviewed existing Codes of Conduct for municipalities in Ontario, across Canada and internationally, as well as those for the federal and provincial governments, paying particular attention to the relative effectiveness of enforcement provisions relative to the overall cost of the programs. There are common elements that are included in many codes, and staff has incorporated many of these in the draft City of Ottawa Code of Conduct for Members of Council recommended in this report.

In general, there are three types of Codes of Conduct: rules-based, values-based and a hybrid of both. Rules-based codes typically state what a Member of Council shall not do. They often speak to specific things that are not permitted and define exceptions to

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<sup>3</sup> Dean Lorne Sossin, Study on the Statutory Review of the *Conflict of Interest Act* by the Standing Committee on Access to Information, Privacy and Ethics (February 13, 2013): 1700-1705.

the rules. Rules-based codes tend to focus on the penalties that will be imposed for contravention of rules. Most Ontario codes of conduct for elected officials appear to fall within this category. Values-based codes provide overarching statements of values or principles that Members of Council are expected to hold themselves to. They are written in positive language and act as more of a guide rather than a set of rules. Compliance, therefore, is generally more difficult to monitor as principles do not usually speak to specifics. Brampton has adopted a values-based code.

Hybrid codes attempt to find a balance between establishing high level ethical standards and developing some specific rules to be followed for compliance purposes.

The City of Ottawa draft Code of Conduct is a hybrid Code. It has been designed to be easily understood and be implemented seamlessly. It provides both overarching principles and some precise rules designed to enhance public trust and accountability. Perhaps most importantly, the measures are intended to be the first steps in what will be part of a living, ethical framework that will be reviewed and renewed on a regular basis as part of the regular governance reviews.

*The Draft Code of Conduct and Gifts Registry*

***[M]unicipalities and the way in which they operate, either legislatively, administratively, executively, are certainly about the advancement of political ends. And they're certainly about democratic accountability for those who have been elected to office every four years for what they have done. But it is also, I think, true that ... in relation to the exercise of certain powers of the City, the citizens of the City are entitled to an evenhanded, dispassionate treatment, divorced from political considerations.<sup>4</sup>***

*Professor David Mullan, former Toronto Integrity Commissioner*

It is a fundamental responsibility of public officials to ensure that they use their offices to further only the public good and not personal profit or benefit. This tenet is the foundation of ethics rules for both elected officials and civil servants. However, as Justice Bellamy observed, “[t]he roles of elected officials and staff are distinct, and the ethical demands are different.”<sup>5</sup>

Elected officials have legislated responsibilities “to represent the public and to consider the well-being and interests of the municipality”, as well as to establish programs, policies and procedures to govern the community. The mayor has additional, statutory responsibilities including: to provide leadership to Council, to represent the municipality at official functions; to uphold and promote the purposes of the municipality; to promote public involvement in the municipality’s activities; to act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and to participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

<sup>4</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); ref. 5766-5767.

<sup>5</sup> The Honourable Madama Justice Denise E. Bellamy, Report on the Toronto Computer Leasing Inquiry-Toronto External Contracts Inquiry, Volume 2, ‘Good Government’, 2005, Toronto, p.44.

As all elected officials are accountable directly and only to the public, staff is proposing the Code of Conduct be based on the following two pillars:

- Accountability – That elected officials must ensure that their decisions are made with an open mind, with concern for the public good and not personal benefit and without giving preferential treatment to family, friends and supporters; and
- Transparency – That proactive disclosure is an important aspect of enhancing public trust in elected officials. Elected officials should be seen to be open about the manner in which they perform their role as Members of Council.

Ultimately, staff is recommending a Code of Conduct based on a conviction that elected officials are elected to provide judgment and leadership on matters before them; they are accountable to their residents every four years and it is up to the public to determine how well each is performing. Staff believes that transparency is the best tool by which residents can measure the ethical performance of their elected officials.

Ontario municipalities have had varying degrees of success with the implementation of codes of conduct. Staff has provided examples of issues encountered by other municipalities as part of the discussion of each of the proposed elements of the accountability and transparency framework for Ottawa.

The specific elements of Ottawa's proposed Code of Conduct for Members of Council are:

- **General Integrity** – The Code opens with a statement of overarching principles related to integrity, accountability and transparency which stand as a rule within the Code of Conduct.
- **Confidential Information** - Members of Council must maintain the confidentiality of sensitive information that they acquire by virtue of their position. Confidential information is not to be used to further a Member's private interest or that of another individual.
- **Conduct at Council/Committee Meetings** - Members of Council will conduct themselves with decorum at Council and Committee meetings in accordance with the City's *Procedure By-law*. Jurisdiction for conduct of Members in Council or Committee meetings primarily falls to Council and the Chair of the particular body; however, the Integrity Commissioner may be called upon if necessary, particularly where the Chair is subject of a complaint.
- **Discrimination and Harassment** - Members of Council must comply with the Ontario *Human Rights Code* and the City's *Workplace Harassment Policy* and have a duty to treat members of the public, one another and staff with respect and without abuse, bullying or intimidation. Based on experience in other jurisdictions, this provision is not meant to address issues more appropriately

described as an expression of dissatisfaction with political representation, labour relations difficulties or councillors' interpersonal relations.

- **Improper Use of Influence** – Members of Council are not to use one's position for preferential treatment, to influence decisions to the advantage of the Member of Council or the future advantage of a Member of Council. Experts agree that this provision should be crafted at a high level so as not to restrict the ability of a Member of Council to properly exercise their influence and that it is the role of the Integrity Commissioner to interpret the appropriate balance between proper and improper use of influence. Experience in other jurisdictions and recent court rulings have also established a precedent related to the improper use of influence related to Members' private activities.
- **Use of Municipal Property** – Members of Council are not to use municipal property for anything other than City business. Municipal property includes equipment, services and Members' Constituency Services Budgets. Members are also prohibited from obtaining financial gain from the use of City developed intellectual property or technological innovations.
- **Conduct Respecting Staff** – Members of Council and City staff have defined roles in the *Municipal Act, 2001*. Members are expected to respect staff in their work as municipal employees and allow staff to make recommendations based on their professional expertise and free from undue influence or interference. This provision is not meant to address matters related to human resources and labour relations and the Integrity Commissioner will assess whether complaints should more appropriately be dealt with by the City Manager and the City Clerk and Solicitor.
- **Expenses** – Members of Council will be expected to administer their respective Constituency Services Budgets in keeping with the guidelines and specific requirements set out in the Council Expense Policy. While it is not expected that the Integrity Commissioner will be involved with the administrative matters related to Members' Budgets, including the Council Expense Policy in the Code of Conduct provides the opportunity for the Deputy City Clerk and Members of Council to use the Integrity Commissioner as a resource for advice related to a particular expense.
- **Conduct Respecting Lobbying** – As previously identified as part of the establishment of the Lobbyist Registry, Members of Council have an obligation to review the Lobbyist Registry on a monthly basis to ensure that instances where they have been lobbied have been registered. It is expected that Members will follow-up where these instances have not been disclosed and will advise the Integrity Commissioner if they remain undisclosed. Members of Council will also be required to refrain from knowingly communicating with a lobbyist who has been found to have contravened the Lobbyist Registry rules and where a sanction has been applied on that individual.



The Integrity Commissioner is also recommending that Members of Council be prohibited from accepting any personal gift, benefit or hospitality from lobbyists with an active registration (or their registered clients or employees), and sponsorships for benevolent activities from lobbyists with an active registration (or their registered clients or employees) shall only be accepted where permitted by the Community, Fundraising and Special Events Policy.

- **Gifts, Benefits and Hospitality** – Members of Council are not to accept gifts, benefits or hospitality that would to a reasonable member of the public appear to be in gratitude for influence, to induce influence, or otherwise go beyond the necessary and appropriate public functions involved. Gifts, benefits or hospitality that are part of the social protocol or community events linked to the duties of the Member and their role are exempted.

Members will be expected to disclose all gifts, benefits and hospitality received which individually exceed \$200 from one source in a calendar year. This disclosure will be required on a quarterly basis and will form part of a public Gifts Registry.

Tickets received by the Member as a gift or benefit will also be subject to certain restrictions and disclosure. A limit of two tickets for up to two events from one source in a calendar year is permitted. These restrictions do not apply to community events or those events that directly relate to a Member's duties under the *Municipal Act, 2001*.

All tickets of a value exceeding \$30 shall be disclosed through the Gifts Registry along with details on their disposition (e.g. who attended with the member or to whom or what organization they were donated, etc.).

- **Election-Related Activity** – Members of Council are expected to abide by the rules set out in the *Election-Related Resources Policy* that prohibit the use of public funds for any election-related purpose including the promotion or opposition to the candidacy of a person for elected office.
- **Compliance with the Code** – The Integrity Commissioner has both the role of education and advice with regard to the application of the Code as well as the role of investigation and recommendation with regard to compliance with the Code.

The *Municipal Act, 2001* provides two penalties that may be applied if it is determined that a contravention has occurred: a reprimand; and suspension of remuneration for up to 90 days. In line with most codes, additional remedial actions are also included such as: written or verbal apology; repayment or reimbursement for monies received; and removal of membership or as chair of a committee. It is recommended that Council retain the authority to apply the sanction based on the recommendation of the Integrity Commissioner.

The Code would, if approved, also apply to citizen members of the Transit Commission and the Built Heritage Sub-Committee when acting in their capacity as Commissioners

or Committee members. The Transit Commission and the Built Heritage Sub-Committee have either final decision-making power or can influence decisions by way of making recommendations to Committee or Council. Therefore, given the fact that the citizen members' decisions should be made with an open mind and concern for the public good and not personal benefit and without giving preferential treatment to family, friends and supporters, it is recommended the same principles of accountability and transparency apply to the citizen members of these two Council bodies.

### Implementation and Complaints

Staff is recommending the Code of Conduct take effect on July 1, 2013. This will allow City staff, including Information Technology staff, the time required to establish the Gifts Registry and add the ability to close a lobbying file to the Lobbyist Registry. This timeline would also enable the Integrity Commissioner a period within which to provide training on the Code and related policies and procedures to Members of Council and the citizen members of the Transit Commission and the Built Heritage Sub-Committee.

The complaint function is a necessary part of the enforcement of the Code. To be effective, the complaint process should be as easy as possible for residents to access<sup>6</sup> while "balanc[ing] appropriately the rights to procedural fairness that Members possess when they are the subject of a formal complaint".<sup>7</sup>

The Complaint Protocol developed by the Integrity Commissioner is modeled on both the current process for the Meetings Investigator and on what the Integrity Commissioner considers to be best practices elsewhere with respect to code of conduct matters.

Complaints about the Code of Conduct will be submitted through the City Clerk and Solicitor's Office in the same manner as Meetings Investigator complaints. This ensures that the Integrity Commissioner is not unduly burdened by administrative matters and there are no additional costs for such strictly administrative matters. There will be no fee charged for making a complaint.

The Integrity Commissioner has established two kinds of complaints under the Protocol: informal and formal. Individuals are encouraged to use the informal complaint procedure as the first means of remedying behaviour for an activity that they believe violates the Code of Conduct. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint.

While the Integrity Commissioner recommends pursuing an informal complaint as a first course of action, it is not a prerequisite to pursuing the formal complaint procedure.

Formal complaints will need to be based on reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct. A complaint will have

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<sup>6</sup> City of Hamilton. *Submission Respecting the City of Hamilton's Proposed Draft By-Law to establish the Office of the Integrity Commissioner*, prepared by Gregory J. Levine. [Hamilton, Ont.]: May 8, 2008, p. 5.

<sup>7</sup> City of Toronto. *Integrity Commissioner End of Term Report - 2008*, prepared by David Mullan, Integrity Commissioner. [Toronto, Ont.] 8 July 2008, p. 3.

to be submitted in writing, be signed and dated by an identifiable individual and accompanied by a sworn affidavit setting out the evidence in support of the allegation.

Once a formal complaint has been received, the Integrity Commissioner has the ability to seek an informal resolution of a formal complaint as part of the fact-finding portion of that complaint. The Integrity Commissioner would be able to educate, advise and potentially facilitate a resolution between the parties without the need for a full investigation.

A review of Code of Conduct complaints from a number of Ontario municipalities demonstrates that one of the major challenges with establishing a code is that the complaint mechanism can be used as a political tool to address matters that are not specifically Code of Conduct issues.

Of 43 formal reports from six municipalities (Hamilton, Aurora, Toronto, Brantford, Vaughan and Mississauga):

- 47% were complaints from residents (20 complaints – 16 of which were either rejected, ruled as vexatious/frivolous, no jurisdiction to investigate, or the Councillor was found to not have contravened the Code);
- 16% from Council (7 complaints);
- 14% from Councillors against Councillors (6 complaints);
- 14% other (three from election candidates, one from a former Councillor, one from the provincial secretary of the NDP, and one from member of Police Community Partnership); and
- 12% from Employees (5 complaints, 2 of which were former political assistants)

Therefore, the Integrity Commissioner will refer (with the consent of the Complainant) those formal complaints that should more appropriately be dealt with through alternative channels as follows:

- Formal complaints related to the interaction of municipal staff and Members of Council would be addressed by the City Manager and the City Clerk and Solicitor, in consultation with the Mayor's Office;
- Formal complaints pertaining to matters involving current and former Councillors' Assistants would be addressed by the City Clerk and Solicitor and the Deputy City Clerk; and
- Formal complaints concerning matters between one or more Members of Council would be addressed by the Mayor or the Member Services Sub-Committee, as appropriate.

Other highlights of the Complaint Protocols are as follows:

- If the complaint involves a matter that is the subject of an outstanding complaint under another process (such as a court proceeding related to the *Municipal Conflict of Interest Act*, a Human Rights complaint or similar process), the Integrity Commissioner can suspend any investigation pending the result of the other process;
- If the Integrity Commissioner is of the opinion that a complaint is frivolous, vexatious or not made in good faith, or where there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner will not conduct an investigation or will end an investigation in progress;
- No Code of Conduct complaint may be submitted or referred to the Integrity Commissioner after July 1st in a municipal election year. City Council has already adopted an *Election-Related Resources Policy* with its own complaint process. This process is 'active' throughout the election period with enforcement undertaken by the City Clerk and Solicitor's Office. Any Code of Conduct reports will be submitted at the first Council meeting following the municipal election;
- A Member of Council who is the subject of the investigation may consult with a lawyer and charge this expense to their office budget. If the subject of the investigation is a citizen member of the Transit Commission or of the Built Heritage Sub-Committee, the costs may be expensed to the Council administration budget through the City Clerk and Solicitor's Office;
- If the complaint is determined to have merit, the Integrity Commissioner may require the Member to reimburse these expenses to the City; and
- The Integrity Commissioner will retain all records related to the complaint and investigation. Any information acquired by the Commissioner, or anyone working under the direction of the Commissioner, for the purposes of his/her duties under the Act is excluded from the scope of the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) and no one may make an access request under Part I of MFIPPA for that information.

The Complaint Protocol establishes the timelines for a report back to the Member and the Complainant to be no more than 90 days following the official receipt of the formal complaint. If an investigation takes longer than 90 days, an interim report will be provided that advises both parties of the anticipated date the report will be available. If a complaint is not sustained, the Integrity Commissioner will report the results to Council as part of an annual or other periodic report.

The Integrity Commissioner will only report to Council when a complaint is sustained in whole or in part. That report to Council will outline the Commissioner's findings, the terms of any settlement and/or any recommended corrective action. It will be placed on a Council agenda in the same manner that the previous Meetings Investigator reports have been provided. Upon receipt of a report, the City Clerk and Solicitor will list, on the

next regular agenda of City Council, a Notice of Intent from the Integrity Commissioner to submit a report for consideration at the following regular meeting of City Council.

Until such time as the *Municipal Conflict of Interest Act* is amended to address matters of procedural fairness related to Code of Conduct issues at Council, the Integrity Commissioner is not able to provide Members of Council with a right of reply within reports to Council on all Code of Conduct violations.

Rather, a Member of Council will be offered the opportunity to provide written right of reply to be included in the Integrity Commissioner's report to Council in the same manner that staff are provided a management response in Meetings Investigator and Auditor General reports only if the Integrity Commissioner's report to Council does not recommend sanctions of a pecuniary (financial) nature.

If the Integrity Commissioner's report to Council recommends sanctions of a pecuniary (financial) nature, such as the replacement of property or its value, of money spent or suspension of the Member's pay, then the Member of Council will not have a right of reply as part of that report. Instead, the Integrity Commissioner will invite the Member to provide a written response to the report directly to the Integrity Commissioner, for the Commissioner's information only.

#### Regular Reviews for the Code of Conduct and Related Policies

The Code of Conduct and its related policies are part of Council's Accountability Framework and are intended to evolve over time. These are first steps. The Code and the related policies will be reviewed and renewed on an annual basis by the Integrity Commissioner, and as part of the regular governance reviews.

#### BACKGROUND

***The ethical culture of an organization is the set of values operating within it. Those values constitute the first line of defence against unethical behaviour, and they exert by far the most powerful influence. In any organization, there is a formal ethical culture and an informal ethical culture. Formal culture is written policy. Informal culture is learned from observing the behaviour of others—and it usually prevails. Ideally, formal culture and informal culture are the same, and the values set down on paper reflect the real values at work in the organization every day, the values that people respect and have embraced.***<sup>8</sup>

*The Honourable Madame Justice Denise E. Bellamy*

A code of conduct establishes a model of ethical behaviour that is expected of a particular group. Such codes are common in many professions, including doctors, lawyers, auditors, engineers and professional planners, and these codes have generally been instituted and administered by the professional bodies that grant accreditation for

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<sup>8</sup> The Honourable Madame Justice Denise E. Bellamy, Report on the Toronto Computer Leasing Inquiry-Toronto External Contracts Inquiry, Volume 2, 'Good Government', 2005, Toronto, p. 26.

these professions. Over the past decade, as the result of various ethical breaches in organizations both public and private, codes of conduct have become an increasingly common foundation for new accountability and transparency regimes in many spheres, from private corporations to sports groups to research organizations to all levels of government.

Unlike other professions, there is no single generally-accepted code of conduct for elected officials. That being said, a number of codes of conduct for elected officials have been established for various levels of government over the years. These codes take different forms: some have been developed following actual or perceived breaches of ethics and consequently contain specific elements tailored to address the particular ethical situation that arose (e.g. the codes for Toronto, Mississauga and Brampton); others have been established because of the broader belief that a transparent ethical framework is an integral part of government. A number of municipalities have codes that have adapted another municipality's code only slightly (a number of smaller Ontario municipalities such as Windsor, Mississauga and Aurora, have adapted and adopted Toronto's Code of Conduct with very few changes in some cases) and some are legislated (e.g. the governments of England, Australia and New Zealand require every municipal council to adopt a code of conduct that must include specified mandatory provisions).

In reviewing codes of conduct, staff notes the Conflict of Interest Code for Members of the House of Commons provides a good overview of the purpose of a code of conduct for elected officials in its opening provisions, summarized as follows. A code of conduct for elected officials should be established:

- To maintain and enhance public confidence and trust in the integrity of Members as well as the respect and confidence that society places in the institution;
- To demonstrate to the public that Members are held to standards that place the public interest ahead of their private interests and to provide a transparent system by which the public may judge this to be the case;
- To provide for greater certainty and guidance for Members in how to reconcile their private interests with their public duties and functions; and
- To foster consensus among Members by establishing common standards and by providing the means by which questions relating to proper conduct may be answered by an independent, non-partisan adviser.

### *Legislative Framework for Ontario Municipalities*

Ottawa, like all other municipalities in Ontario, is bound by the rules established for it by the provincial government. While codes of conduct for elected officials have existed in other jurisdictions for some time (and been mandated in several countries), it has only been in the last six years that they, along with other accountability and transparency mechanisms, have been included within the legislative framework for Ontario municipalities.

As outlined in the Integrity Commissioner report (ACS2012-CMR-CCB-0034), a review (Bill 130) of the *Municipal Act, 2001* notably added several accountability and integrity measures, some of which were mandatory for municipal councils while others were optional. The revised *Municipal Act, 2001*, Part V.I, entitled “Accountability and Transparency” sets out the accountability measures and integrity officers that municipal councils have the express authority to employ or appoint. Ontario municipalities have the discretionary authority to adopt a code of conduct and appoint an integrity commissioner, establish a lobbyist registry and appoint a lobbyist registrar, appoint an ombudsman, and appoint a statutory auditor general.

It should be noted that the accountability and integrity measures in the revised *Municipal Act, 2001* are discretionary for all Ontario municipalities except for Toronto. The *City of Toronto Act, 2006* requires a mandatory code of conduct for elected officials in the City of Toronto as well as an Integrity Commissioner. In addition, the Toronto legislation requires a Lobbyist Registry with a Lobbyist Registrar, as well as an Ombudsman and a statutory Auditor-General.

Both the discretionary accountability and integrity tools for Ontario municipalities and the mandatory ones for Toronto are directly related to the events that led up to and the recommendations from two City of Toronto judicial inquiries in 2005 resulting from what is commonly known as the MFP Computer Leasing scandal. A brief overview of this issue (as well as the events examined in the 2011 Mississauga Judicial Inquiry) will help provide context regarding the provincial legislation and Ontario precedents that underpin the draft Code of Conduct being recommended by staff and the related policies and procedures recommended in this report.

*City of Toronto Judicial Inquiry (two Inquiries, also known collectively as the “Bellamy Inquiry” or the ‘MFP’ Inquiry)*

Section 274 of the *Municipal Act, 2001* permits councils to request a judicial review to “investigate any supposed breach of trust or other misconduct of a member of council, an employee of the municipality or a person having a contract with the municipality in relation to the duties or obligations of that person to the municipality.” In 2001, following a councillor’s questions on what had been considered a “run-of-the-mill staff report about ho-hum photocopiers,” the City of Waterloo’s issues with MFP Financial Services Ltd. (MFP) came to light. These concerns focused on the financing for a millennium project called RIM Park, a 500 acre recreational site purported to cost the City of Waterloo about \$48M, but was subsequently determined to be over \$227M. After an out of court settlement in 2002 left the City’s costs at \$145.7M, a judicial inquiry on this matter was initiated and concluded with the release of Mr. Justice Sills report in October 2003. Prior to awarding the photocopier contract to MFP, the City of Toronto undertook a review of its own dealings with MFP. The results of this review led to the council resolution on February 14, 2002 for a judicial review.

In September 2005, Madam Justice Denise Bellamy delivered her four-volume report to Toronto City Council containing the results of two related judicial inquiries. The two inquiries were the Toronto Computer Leasing Inquiry and the Toronto External Contracts Inquiry, collectively known as the “MFP Inquiry” or the “Bellamy Inquiry”. In

short, the MFP Inquiry was in response to concerns about apparent cost overruns in the City of Toronto's Information and Technology procurement process. Justice Bellamy made 241 recommendations mostly relating to the broad themes of ethics, governance, lobbying, and procurement (as well as 3 additional recommendations related to Public Inquiries). Specifically related to ethics, Justice Bellamy made the following recommendations to the City of Toronto's Code of Conduct related to the "general principles":

1. The City should expand its current code of conduct for councillors and its conflict of interest policy for staff to include broader ethical considerations;
2. The codes of conduct should go beyond the minimum standards of behaviour and set out the highest ideals and values toward which all public servants should be working;
3. The codes of conduct should be written in plain language that can be understood by all public servants as well as by the public;
4. The codes of conduct should reflect the difference in the roles of councillors and staff without setting different ethical standards; and
5. Political staff should be required to adhere to the same ethical guidelines that apply to councillors and City staff. Councillors should have their staff execute an agreement to abide by the City's codes of conduct.

While the MFP Inquiry was concluding its work, Bill 53, the *Stronger City of Toronto for a Stronger Ontario Act* was adopted on June 12, 2006. It included a number of accountability and transparency initiatives that were established in response to the issues raised in the MFP Inquiry. As described earlier, the City of Toronto is required to have a Code of Conduct for its Members of Council and appoint an Integrity Commissioner to enforce the Code. It is also required to have a Lobbyist Registry, an Ombudsman, and a statutory Auditor-General. These mandatory accountability and transparency measures cost the City of Toronto approximately \$6.5 million dollars in 2012.

On January 1, 2007 the *City of Toronto Act, 2006* came into force. The Act confirmed the Bill 53 amendments as they pertained to integrity, transparency and oversight. Further, it established the position of a mandatory Meetings Investigator to review and make recommendations with respect to complaints about the appropriateness of closed meetings. These measures were also incorporated in changes to the *Municipal Act, 2001* governing all other Ontario municipalities.

#### *The City of Mississauga Judicial Inquiry*

On November 11, 2009, Mississauga's City Council requested a judicial inquiry under Section 274 of the *Municipal Act, 2001* to investigate issues in connection with the acquisition by the City of Mississauga of approximately 8.5 acres of land in the city centre and issues in connection with the December 2000 Enersource Shareholders Agreement to which the City was a party. Specific issues were raised with respect to Mayor Hazel McCallion's involvement in these dealings on behalf of the private



business interests of her son, Peter McCallion. The Inquiry, led by Mr. Justice J. Douglas Cunningham, concluded its hearings on February 8, 2011 and issued its report, subtitled, "Updating the Ethical Infrastructure," on October 3, 2011.

It is anticipated that Justice Cunningham's recommendations may be taken into account as part of the provincial government's current review of the *Municipal Act, 2001* as the Bellamy recommendations were considered during the previous review. For the purposes of this report, staff took particular note of both the Inquiry's report and the two-day expert panel discussion on municipal ethics that occurred on the final hearing days of December 15 and 16, 2010. The expert testimony of Professor David Mullan, professor emeritus of law at Queen's University and the City of Toronto's Integrity Commissioner from 2004 to 2008, Gregory Levine, former lawyer for the City of Toronto who provided legal advice to the Mayor's special committee on a code of conduct and the current Integrity Commissioner for Kitchener, Waterloo and West Lincoln, and Dean Lorne Sossin, current Dean of Osgoode Hall Law School and former interim Integrity Commissioner for the City of Toronto, on best practices for municipal ethics regimes informed Justice Cunningham's recommendations. It also provided valuable insight into the current thinking of experts for staff's development of the recommended Code of Conduct, the recommended terms of reference for an Integrity Commissioner as well as for the lobbyist registry.

As the Inquiry was proceeding, Mississauga adopted a Code of Conduct and established the position of Integrity Commissioner. These initiatives were reviewed as part of the Inquiry's ethics panel discussion and recommendations were made on specific elements as part of Justice Cunningham's recommendations. Staff has also incorporated many of those recommendations into the proposed Code of Conduct.

#### Magder v. Ford

In August 2010, the City of Toronto's Integrity Commissioner, Janet Leiper, issued a report responding to a Code of Conduct complaint in which she concluded that Councillor Rob Ford had breached several provisions of the City of Toronto's Code of Conduct (i.e. Gifts and Benefits; Use of City Property, Services and Other Resources; and Improper Use of Influence). Ms. Leiper found that Rob Ford had used his status as a City Councillor, the City's logo and City resources to solicit funds for a private football foundation created in his name.

When the report was considered, Toronto Council approved the recommended sanction that the Councillor reimburse the lobbyists and the corporation engaged in business with the City in the amount of \$3,150 and provide confirmation of this reimbursement to the Integrity Commissioner.

Over the course of the next two years, the Integrity Commissioner made several attempts to follow up with Mr. Ford and confirm whether the monies had been repaid. In the interim, Councillor Rob Ford was elected to the position of Mayor in the 2010-2014 municipal election.

In January 2012, the Integrity Commissioner issued a supplementary report to Council wherein she reported that, after numerous attempts to follow-up, the Mayor had written

to her and advised that he had corresponded with the donors, three of which had confirmed that they did not wish to receive reimbursement of their donations. Ms. Leiper informed the Mayor that despite the responses he received, he was still expected to abide by the sanction imposed by Council.

When the Integrity Commissioner's report came to Council in February 2012, Mayor Ford was present at the meeting, spoke to the matter and voted on a motion to rescind Council's decision of August 2010. As a result, an application was brought against Mayor Ford to seek a determination of whether Mayor Ford had contravened the *Municipal Conflict of Interest Act* (MCIA) by speaking or voting on the motion before Council in February 2012.

On November 26, 2012, Justice Hackland found that Mayor Ford had violated the MCIA by speaking at the meeting and voting on the motion to rescind Council's previous directive. Justice Hackland further concluded that other sections of the MCIA that might have provided a defense for Mayor Ford (i.e. the amount for reimbursement was insignificant or that the contravention had been an error in judgment) did not apply. For these reasons, Justice Hackland declared Mayor Ford's council seat vacant, though he did not impose any further period of disqualification from municipal office.

Mayor Ford appealed Justice Hackland's decision and in the meantime was awarded a stay of judgment pending the outcome of the appeal. On January 25, 2013, the Divisional Court released its decision on the appeal. The three-judge panel supported Justice Hackland's findings with respect to the MCIA being "engaged" when Mayor Ford spoke at the meeting and voted on the motion to rescind Council's previous directive. However, they concluded that Justice Hackland had erred in finding that Mr. Ford had contravened the MCIA based on the conclusion that the financial sanction imposed by Council was not authorized by the *City of Toronto Act, 2006* or the City's Code of Conduct. Specifically, Council could not impose a "penalty" on a Member other than those authorized by the *City of Toronto Act, 2006* and that requiring Mayor Ford repay money that he did not receive personally equated to a penalty as opposed to a remedial action. In effect, Mayor Ford's appeal was granted and Justice Hackland's decision was overturned.

Regardless of the outcome, the case of *Magder v. Ford* reinforced ongoing concerns in Ontario with respect to the relationship of a municipal code of conduct and the MCIA, particularly as this relationship relates to procedural fairness and a Member's ability to address Council on Code of Conduct matters.

### *Experience of Other Ontario Municipalities*

Since the optional accountability and transparency tools in the revised *Municipal Act, 2001* were enacted, a number of municipalities have adopted codes of conduct and created the position of an integrity commissioner. Their experiences have provided staff with valuable insight into the development and implementation of these measures for the City of Ottawa. Staff has continued to survey Ontario municipalities, large and small, with respect to codes of conduct and integrity commissioners (Document 2).

Municipalities have had varying degrees of success with both the implementation of a code of conduct and an integrity commissioner. Staff has provided examples of issues encountered by other municipalities as part of the discussion of each of the proposed elements of the accountability and transparency framework for Ottawa.

*Status of Accountability and Transparency Measures, including a Code of Conduct, for the City of Ottawa*

***An effective municipal accountability regime requires a culture of accountability that pervades municipal government. That culture of accountability cannot simply be imposed top-down through legislation; it requires strong leadership from various municipal stakeholders. A balance must be struck that provides consistency, predictability, coherence, fairness, and transparency, as well as sufficient flexibility.***<sup>9</sup>

*Justice Cunningham, Mississauga Judicial Inquiry*

Currently, the City of Ottawa has a Code of Conduct for employees (the *Employee Code of Conduct* also applies to staff hired in the elected officials' offices). Conversely, the *Municipal Conflict of Interest Act*, the *Provincial Offences Conflict of Interest Guidelines*, the *Election-Related Resources Policy*, the *Hiring and Employment of Family Members Policy* for Elected Officials, the *Responsible Computing Policy*, and the *Procedure By-law* govern various aspects of the conduct of elected officials.

As part of the 2010-2014 Governance Review, City Council endorsed an Accountability Framework that includes a Code of Conduct for Members of Council, an Integrity Commissioner, public disclosure of office expenses, and a low-cost lobbyist registry and gifts registry. This is in addition to the *Accountability and Transparency Policy*, a *Delegation of Powers Policy*, the application of the statutory provisions related to the office of the Auditor General and the creation of the position of Meetings Investigator to address complaints related to closed meetings adopted by Council in November 2008, to meet the mandatory requirements under the revised *Municipal Act, 2001*. Members of Council have been disclosing their expenses monthly since January 2011.

On July 11, 2012, City Council approved the establishment of the Integrity Commissioner position for the City of Ottawa. The position was created to fulfill the legislated role of an Integrity Commissioner as outlined in the *Municipal Act, 2001* including an educational and advisory component. The Integrity Commissioner has also been delegated the legislative responsibilities of the City's Meetings Investigator and Lobbyist Registrar. Specifically, the Integrity Commissioner's primary role at the outset of his appointment has been to provide recommendations with respect to a Code of Conduct for Members of Council and related policies and protocols.

This report is jointly presented by the City Clerk and Solicitor and the Integrity Commissioner. For the purposes of this report, the generic term 'staff' is used for convenience and brevity only, as the Integrity Commissioner is an independent, arms-length statutory officer and not staff of the City.

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<sup>9</sup> The Honourable Justice J. Douglas Cunningham, "*Updating the Ethical Infrastructure: Report of the Mississauga Judicial Inquiry*", 3 October 2011, p. 157.

In developing the recommended Code presented in this report, staff notes that the changes to the *Municipal Act, 2001* resulting from Bill 130 do not provide direction with respect to the content of a code of conduct for elected officials. Many municipal ethics experts believe it is better that municipalities define their own Code of Conduct rather than have a single code followed by all. Professor David Mullan, former Toronto Integrity Commissioner, summarizes this current reasoning as follows:

**[O]ne of the advantages, it seems to me, of downloading most of the responsibility for the formulation of codes of conduct, be they principle based or rules based, on individual councils is it enables responses to be made to the desire of councillors to have a rule. If they want a rule, we can give them a rule. If they don't want a rule, then we can give them a set of principles.**

**What are they comfortable dealing with? In other words, it gives them a certain amount of empowerment over what is actually involved in the code of conduct, subject, of course, to a whole lot of overriding principles that we want to impose on their code of conduct.**

**The other clear advantage, of course, of having a municipal code of conduct for each municipality is the ease with which things can be changed. If the gifts rule is not working and everyone sees that it's not working, then it is compared with amending primary legislation. It is relatively easy to take an amendment to city council and get it changed.**

**And then, of course, the third thing is, I think, that having responsibility as a council for the behaviour of yourselves actually is a very important civic responsibility that councillors have. And indeed it -- it also leads to the situation where you can deal with issues, sometimes conflict of interest, sometimes use of confidential information, by sanctions or by – or by means other than the sledgehammer of getting rid of someone by going to a court and applying for disqualification....<sup>10</sup>**

*Professor David Mullan, Mississauga Judicial Inquiry*

As directed by Council and the Governance Renewal Sub-Committee, staff has reviewed numerous codes of conduct from around the world and found no single 'best-practice'. In developing the draft Code of Conduct and accompanying policies and tools, staff examined existing Codes of Conduct for municipalities in Ontario, across Canada and internationally, as well as those for the federal and provincial governments, paying particular attention to the relative effectiveness of enforcement provisions relative to the overall cost of the programs. There are common elements that are included in many codes, and staff has incorporated many of these in the draft City of Ottawa Code of Conduct for Members of Council recommended in this report.

The Integrity Commissioner has also conducted one-on-one consultations with Members of Council in preparation for this report.

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<sup>10</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); ref. 5613 – 5614.

As well, the Accountability Framework was identified as a pillar of Mayor Watson's election platform, and staff and the Integrity Commissioner consulted with him on the recommendations in this report. This is consistent with the Mayor's statutory role under Section 225(c.1) of the revised *Municipal Act, 2001* to provide information and recommendations to the council with respect to the role of council to ensure the accountability and transparency of the operations of the municipality. As Justice Bellamy noted, "A mayor's powers may vary by municipality, but the ethical culture of municipal government trickles down from the mayor's office regardless of the mayor's mandated role."<sup>11</sup>

*City of Ottawa Draft Code of Conduct and Related Recommendations on a Gifts Registry, a Council Expense Policy and the Role of the Integrity Commissioner*

Municipal experts agree that it is better to put an ethics regime in place before a problem comes to light, as it is then a reflection of the broader values and culture of the organization and not as a response to specific ethical breaches. In that respect, the City of Ottawa has the advantage over a number of other municipalities that have preceded it (Toronto, Mississauga, Brampton and Vaughan for example).

The City of Ottawa draft Code of Conduct has been designed to be easily understood, to be implemented with little effort and to enhance public trust and accountability. Perhaps most importantly, the measures are intended to be part of a living, ethical framework that will be reviewed and renewed on a regular basis as part of the regular governance reviews.

### **Principles of the Code of Conduct and Related Policies**

It is a fundamental responsibility of public officials to ensure they use their offices to further only the public good and not personal profit or benefit. This tenet is the foundation of ethics rules for both elected officials and civil servants. However, as Justice Bellamy observed, "[t]he roles of elected officials and staff are distinct, and the ethical demands are different."<sup>12</sup>

Generally, staff's responsibilities are to advise Council, to make recommendations related to City programs and services and to implement Council's decisions. Specific duties are prescribed through contracts or collective agreements, and staff is accountable to Council and to the public through their management hierarchy. City of Ottawa staff has an *Employee Code of Conduct* supported by various specific policies, but staff do not believe the exact same Code would serve Council as well.

Elected officials have legislated responsibilities "to represent the public and to consider the well-being and interests of the municipality," as well as to establish programs, policies and procedures to govern the community. The mayor has additional, statutory responsibilities including: to provide leadership to Council, to represent the municipality at official functions; to uphold and promote the purposes of the municipality; to promote

<sup>11</sup> The Honourable Madame Justice Denise E. Bellamy, Report on the Toronto Computer Leasing Inquiry-Toronto External Contracts Inquiry, Volume 2, 'Good Government', 2005, Toronto, p. 27.

<sup>12</sup> The Honourable Madame Justice Denise E. Bellamy, Report on the Toronto Computer Leasing Inquiry-Toronto External Contracts Inquiry, Volume 2, 'Good Government', 2005, Toronto, p.44.

public involvement in the municipality's activities; to act as the representative of the municipality both within and outside the municipality, and promote the municipality locally, nationally and internationally; and to participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

**[M]unicipalities and the way in which they operate, either legislatively, administratively, executively, are certainly about the advancement of political ends. And they're certainly about democratic accountability for those who have been elected to office every four years for what they have done. But it is also, I think, true that ... in relation to the exercise of certain powers of the City, the citizens of the City are entitled to an evenhanded, dispassionate treatment, divorced from political considerations.<sup>13</sup>**

*Professor David Mullan, former Toronto Integrity Commissioner*

All elected officials are accountable directly and only to the public. Therefore, when developing a Code of Conduct, staff is proposing that it be founded upon two basic pillars as follows:

- Accountability – That elected officials must ensure that their decisions are made with an open mind, with concern for the public good and not personal benefit and without giving preferential treatment to family, friends and supporters; and
- Transparency – That proactive disclosure is an important aspect of enhancing public trust in elected officials. Elected officials should be seen to be open about the manner in which they perform their role as Members of Council.

An examination of municipal codes of conduct reveals three types of codes: rules-based, values-based and a hybrid of both. Rules-based codes specifically stipulate what a Member of Council shall not do. These often incorporate specific examples as well as defined exceptions to the rules for clarity. They tend to focus on imposing penalties for contravention of rules. Most Ontario codes of conduct for Members of Council appear to fall within this category. Values-based codes provide statements of overarching values or principles that Members of Council are expected to hold themselves to. They are written in positive language and act as more of a guide rather than a set of rules. Compliance is generally more difficult to monitor as principles do not generally speak to specifics. Brampton has adopted a values-based code. Hybrid codes attempt to find a balance between establishing high level ethical standards and developing some specific rules to be followed for compliance purposes.

There is a debate among experts of the relative merits of rules-based versus values-based codes. This argument can be summarized as below:

**I think that values-based approach is ultimately more effective than a rules-based approach for the simple reason that everyone who (has) ever**

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<sup>13</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); ref. 5766-5767.

**attempted a rules-based approach will find inadvertent, and unintended, loop holes of perverse incentives to do the thing that most achieves their end just on the other side of where that rule ends... So - in my view - the preference to a values-based approach is that it is evolving, and it takes on ... the sense of trusteeship, or a public trust... I don't think we can take 19th Century approaches to the corporation of a city, or a municipality, and simply graft that language onto the kinds of challenges where we're talking about. I think it does need to evolve, and to have space to adapt, and I think a values-based approach does that far better than a rules-based approach....more rules, more complexity, more detail, and again I don't think that ultimately achieves the goals that we would want from a municipal accountability regime.<sup>14</sup>**

*Dean Lorne Sossin, Osgoode Law School*

**I agree with that broadly. I mean, there's a huge - there's a tension in public administration between rules-based, ethics-based approaches, but I think that in some ways ... it's not either/or. It has to be both. We have to have a values-based approach, we also need rules. We clearly need rules.<sup>15</sup>**

Mr. Gregory Levine

As a result, staff are recommending a hybrid model for the City of Ottawa's Code of Conduct, on the understanding that the Code will evolve with use and review, and with the input and advice from the Integrity Commissioner.

Staff has been providing the Integrity Commissioner with their research on how integrity commissioners work in other jurisdictions, as well as information related to complaints against other codes. The experience in other municipalities may be useful in this regard. For example, it is important to understand that the Code of Conduct is a code of ethical behaviour and is not meant to provide a 'final appeal' mechanism for residents with long-standing disputes with the City and/or their councillor, neither is it meant to be a forum for those who are unhappy with their representative. A survey of complaints against Ontario municipal codes of conduct reveals that there are a number of complaints made in this regard, and there is a corresponding cost to investigating these kinds of 'appeal' complaints. In order to be and remain cost-effective, the Integrity Commissioner may wish to review a complainant's history with the City to determine if a complaint of such an 'appeal' nature should be pursued against the Code of Conduct.

There are also a number of examples of code of conduct complaints from former municipal staff and former councillors' assistants complaining about their former employer. In this regard, the Integrity Commissioner has the authority to ask further questions of the complainant to determine if the complaint is more appropriately addressed as a labour relations matter rather than as a complaint against the Code.

Further, the research demonstrates that a significant portion of complaints come from councillors lodging complaints about one another. During his testimony before the Mississauga Judicial Inquiry, Dean Sossin noted that "there's another side to the coin,

<sup>14</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); ref. 5597-5599.

<sup>15</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); ref. 5599.

which I actually worry about more, and that's the usurping of accountability functions simply as politics or partisanship by other means... I was saddened and discouraged by the volume of business coming from one councillor complaining about another, specifically in context that [were] clearly motivated by the attempt to gain a political advantage rather than to advance a broader accountability goal. And that is very difficult to ward against... you've got to take it at face value as a concern, but in doing this one feels what kind of pawn am I and to what end ... if anything I worry [that] politics as a reality is not too little recognized, but too much part of the accountability process so far.” With respect to that, the Integrity Commissioner has the ability, should s/he be of the opinion after the investigation that a complaint was brought forward by one councillor (or member of a councillor’s staff) against another for primarily political or frivolous purposes, to recommend a sanction against the complainant.

With respect to the issue of costs, most municipalities do not require a fee to file a code of conduct complaint. However, the City of Hamilton has instituted a \$100 fee for filing code complaints. The fee is refundable, but is retained if the Integrity Commissioner finds the complaint “to be frivolous, vexatious, or not made in good faith.” Hamilton’s Integrity Commissioner has retained the fee for two of three reports. In December 2011, Hamilton’s Accountability and Transparency Sub-Committee voted down a motion to eliminate the City’s \$100 fee for complaints. At this time, staff is not recommending a fee for the initial complaint process. However, the Integrity Commissioner may wish to establish one at a later date should there be sufficient evidence to warrant one.

Ultimately, staff is recommending a Code of Conduct based on the underlying principle that elected officials are elected to provide judgement and leadership on matters before them; they are accountable to their residents every four years and it is up to the public to determine how well each is performing. Staff believes that transparency is the best tool by which residents can measure the ethical performance of their elected officials.

## DISCUSSION

***[T]o the extent there is an accountability framework, I think its overarching purpose is to both instil and ensure public confidence. And by saying that, it also puts an emphasis on not just what standards are complied with, but the appearance of that compliance to the public and of course, in advancing public interest goals at the end of the day, not the goals or interests of the individuals who might hold office from time-to-time<sup>16</sup>.***

*Dean Lorne Sossin, Osgoode Law School*

Below are the elements of the Code of Conduct recommended by staff. Each section includes information explaining the rationale behind the recommendation, as well as an overview of the complaints and enforcement of the specific provisions around the province. The experience of other municipalities, particularly with respect to complaints, is useful for Committee and Council to understand prior to adoption of the Code, and to help to build a library of precedents for the Integrity Commissioner.

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<sup>16</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); ref. 5584.



## 1. Overarching General Integrity/ Principles

Many codes of conduct begin with an opening statement regarding general integrity expected of Members of Council or overarching principles related to integrity, accountability and transparency.

These provisions typically relate to the role of Members of Council under the *Municipal Act, 2001* and their duty to “represent the public and to consider the well-being and interests of the municipality.” The role of Council as defined in the *Act* is as follows:

Section 224 - It is the role of council:

- (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 services the municipality provides;
- (d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) to ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) to maintain the financial integrity of the municipality; and
- (f) to carry out the duties of council under this or any other Act.

In his testimony at the Mississauga Judicial Inquiry as an expert panellist, Professor David Mullan noted that, “it is important in any such code of conduct to have a statement of key principles, as the Toronto Code does and as the 2010 Mississauga Code does, and then to consider how you actually convert those principles into detailed rules.”<sup>17</sup> Staff is therefore recommending general integrity principles based on the role of council, the legislative framework within which municipal councils work and the inherent expectations of an elected official by his/her constituents.

With respect to the enforceability of the overarching statement of principles or general integrity provisions, as Toronto’s former Integrity Commissioner, Professor Mullan, requested a legal opinion regarding the significance of the statement of principles in Toronto’s Code of Conduct. Specifically, he inquired as to whether the statement of principles “provide an independent or stand alone set of obligations the alleged violation of which can be the proper subject of an investigation by the Integrity Commissioner.”<sup>18</sup> The national law firm, Heenan Blaikie, concluded that, since Toronto’s Code of Conduct indicates that the key statements of principle ‘underline’ the Code of Conduct, the role of the statements of principle is to “underscore or identify with greater precision the

<sup>17</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); 5602: 3-7.

<sup>18</sup> Legal Opinion from Heenan Blaikie (City of Toronto): July 4, 2005

*purpose of the Code of Conduct* and not to create additional substantive obligations.”<sup>19</sup> In his testimony at the Mississauga Judicial Inquiry, Professor Mullan indicated that he struggled with this conclusion and felt that having the key principles stand as a rule within the code of conduct, as is the case in the Mississauga Code of Conduct, was “highly desirable”.<sup>20</sup> Staff is, therefore, recommending that approach.

Further, as part of his formal exhibit to the Mississauga Judicial Inquiry,<sup>21</sup> Professor Mullan recommended that the Code define an “apparent” conflict, and he recommended the definition included in British Columbia’s *Members Conflict of Interest Act*, which states that an apparent conflict exists if there is a reasonable perception, which a reasonably well-informed person could properly have, that the member’s actions must have been affected by his or her private interest.

The issue of apparent conflict is not universally agreed upon amongst ethics experts, and most note that this is a difficult and challenging provision to interpret and enforce. The following excerpt from a report to Toronto City Council by then-Integrity Commissioner David Mullan identifies the specific issues raised by their City Solicitor as follows:

The City Solicitor also advised that the standard of “an apparent conflict of interest” is a very high one. While it may be appropriate for government employees who are to act impartially, it is not a standard that is as easily applied to any legislator including members of Council. Members of Council have an advocacy role (i.e. they advocate positions on what public policy should be) and make policy decisions in the public interest that in some cases operate to the special benefit of private individuals (e.g. site specific zoning amendments). In this respect, the City Solicitor drew to my attention that the Alberta Select Special Conflict of Interest Act Review Committee (acting on the advice of its Ethics Commissioner) (May 2006) did not recommend amending the Alberta *Conflict of Interest Act* to include apparent conflict of interest for all MPPs. The City Solicitor also was concerned that my formulation of conflict of interest in the broader sense identified by the Bellamy Commission was subject to interpretation as simply another expression of the concept of apparent (as opposed to real) conflict of interest.

The City Solicitor has therefore advised that any response to the Bellamy recommendations on extending the reach of conflict of interest be dealt with in discrete provisions of the Code identifying particular species of conduct (as exemplified by the provisions on gifts and improper use of influence as well as the recently adopted policy on the appointment of relatives).<sup>22</sup>

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<sup>19</sup> Ibid

<sup>20</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); 5646.

<sup>21</sup> Exhibit A (COM-008-001-611), “Report to Judicial Inquiry Into Matters Involving Mayor of City of Mississauga Appointed Under Section 274 of the *Municipal Act, 2001*”, David Mullan, December 16, 2010.

<sup>22</sup> City of Toronto. *Amendments to the Code of Conduct for Members of Council*, prepared by David Mullan, Integrity Commissioner. [Toronto, Ont.]: 21 September 2006, p. 11-12.

All three members of the Ethics Panel at the Mississauga Judicial Inquiry expressed their desire for the Commissioner to make recommendations with respect to apparent conflicts of interest.<sup>23</sup> Justice Cunningham did make explicit recommendations regarding conflict of interest and the elements of a Code of Conduct (Recommendations 15, 16 and 17)<sup>24</sup> and staff has incorporated his recommendations in this draft Code.

That said, staff has not incorporated 'apparent' conflict of interest as a stand-alone provision in the draft Code. This approach is on the understanding that the Integrity Commissioner would be better placed to make that recommendation as part of a future iteration of the Code if it is deemed necessary and desirable based on experiences at that point in time.

### Experience in Other Ontario Municipalities

There is a limited record of any complaints in Ontario being made with respect to a General Integrity provision. As referenced above, staff acknowledge that this approach could lead to complaints related to 'general integrity' that might most accurately be described as a 'final appeal' when a constituent has exhausted all other available processes. For example, in Hamilton, a resident made numerous allegations of corruption and unethical behaviour by the Councillor stemming from a two decades old grading dispute concerning the residence of the complainant. The complaint was ultimately deemed frivolous and vexatious. This approach may also lead to situations where former or future candidates make complaints that are determined to be politically motivated. Should there be too many complaints related to these provisions that are deemed to be frivolous and vexatious, the Integrity Commissioner will recommend whether the General Integrity provisions would best serve the Code of Conduct by becoming a statement of principles instead.

## **Recommended Provision**

### **I. GENERAL INTEGRITY**

- **Members of Council are committed to performing their functions with integrity, accountability and transparency.**
- **Members of Council are responsible for complying with all applicable legislation, by-laws and policies pertaining to their position as an elected official.**
- **Members of Council recognize that the public has a right to open government and transparent decision-making.**
- **Members of Council shall at all times serve and be seen to serve the interests of their constituents and the City in a conscientious and diligent manner and shall approach decision-making with an open mind.**

<sup>23</sup> Mississauga Judicial Inquiry Transcripts (December 16, 2010), ref 6012-6013.

<sup>24</sup> The Honourable Justice J. Douglas Cunningham, "Updating the Ethical Infrastructure: Report of the Mississauga Judicial Inquiry", 3 October 2011, p. 174-176.

- **Members shall avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real.**
- **Members of Council shall not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.**
- **For greater clarity, this Code does not prohibit members of Council from properly using their influence on behalf of constituents.**

## 2. Confidential Information

Confidentiality provisions often include reference to relevant provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. Many procedure by-laws also require that confidential information discussed *in camera*, as well as the substance of the deliberations of an *in camera* meeting, shall not be disclosed. Specifically, section 38 of the City's *Procedure By-law* states that "No Member shall...where a matter has been discussed *in camera*, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the *in camera* meeting."

Some examples of provisions relating to confidentiality include:

- It is the responsibility of Members of Council to ensure that confidential information is kept strictly confidential and not released without the approval of Council.
- Members of Council shall not directly or indirectly, release, make public or divulge information related to *in camera* deliberations of Council unless expressly authorized by Council.
- No member shall disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.
- Confidential information includes information in the possession of the City that the City is either prohibited from disclosing, or is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act*, or other legislation.

In Ontario, Members of Provincial Parliament (MPPs) are not to "use information that is obtained in his or her capacity as a Member and that is not available to the general public to further or seek to further the Member's private interest or improperly to further or seek to further another person's private interest." In addition, MPPs are not to disclose this information to anyone who the Member believes might use the information for private interests.

The provision recommended by staff includes the provincial prohibition as well as the restrictions relating to confidential information currently found in the *Procedure By-law*. It

further specifies the obligation a Member of Council has to preserve the confidentiality of information obtained by virtue of their office.

### Experience in Other Ontario Municipalities

In the review of Integrity Commissioner reports in Ontario municipalities, a significant number of complaints related to breaches of confidentiality provisions. The majority of the complaints were either submitted by a Member of Council against another Member or forwarded to the Integrity Commissioner by the municipal council as a whole. In a number of instances, it was found that the Member in question had deliberately released confidential information and in those cases the Member was reprimanded.

## **Recommended Provision**

### **II. CONFIDENTIAL INFORMATION**

**By way of their office, Members of Council acquire confidential information from a variety of different sources including confidential personal information related to constituents who have contacted their office. Confidential information includes information in the possession of, or received in confidence by the City, that the City is either prohibited from disclosing, or is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”). Members of Council shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member’s private interest or improperly to further or seek to further another person’s private interest.**

**In accordance with the rules under MFIPPA and the *Procedure By-law*, Members of Council shall not:**

- (a) Where a matter has been discussed *in camera*, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the *in camera* meeting (Subsection 38 (d) of the *Procedure By-law*); and**
- (b) Disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.**

### *3. Conduct at Council/Committee Meetings*

This provision concerns the conduct and decorum of Members of Council during meetings of Council or any Committees. The City’s *Procedure By-law* outlines the rules for conduct at Council including the use of offensive and unparliamentarily language, confidentiality of matters discussed *in camera*, disobeying the Rules of Procedure, etc. Most Codes simply refer to the rules already established and may include additional details or explanation.

At the City of Toronto, breaches of this provision have proven to be somewhat awkward to enforce. In April 2005, Toronto's Integrity Commissioner investigated a complaint filed by a resident regarding the behaviour of a Councillor during a Council meeting. The Integrity Commissioner concluded that conduct by Members of Council in Council or Committee meetings falls under the jurisdiction of Council and the Chair of the particular body. The current Integrity Commissioner has taken the same position and suggests that she would only intervene in such a circumstance upon the request of Council.

Staff concur with Toronto's Integrity Commissioner that conduct by Members of Council in Council or Committee meetings falls under the jurisdiction of Council and the Chair of the particular body. However, the rationale for including such a provision in the draft Code was expressed by David Mullan, in his end of term report to Toronto City Council. As the outgoing Integrity Commissioner, Professor Mullan noted that it can be very difficult to leave these matters entirely with the Chair if the Chair is the subject of the complaint. Therefore, the provision recommended by staff is similar to that of Toronto and reiterates the rules outlined in the *Procedure By-law* related to Conduct at Council and Committee meetings. The Integrity Commissioner may recommend that this provision be removed in a future iteration if they are also of the opinion that these matters are best addressed in the *Procedure By-law* alone.

### **Recommended Provision**

#### **III. CONDUCT AT COUNCIL/COMMITTEE MEETINGS**

**Members of Council shall conduct themselves with decorum at all City Council and Committee meetings in accordance with the provisions of the *Procedure By-law* (Section 38) being:**

**No member shall:**

- (a) Speak disrespectfully of the Reigning Sovereign or the Lieutenant-Governor of any province, or of a fellow member of Council or staff;**
- (b) Use offensive words or unparliamentary language;**
- (c) Speak on any subject other than the subject in debate;**
- (d) Where a matter has been discussed *in camera*, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the *in camera* meeting;**
- (e) Disobey the Rules of Procedure, or a decision of the Mayor or of the Council on questions of order or practice or upon the interpretation of the Rules of Procedure.**

#### *4. Discrimination and Harassment*

Discrimination and Harassment provisions (typically called 'Discreditable Conduct provisions') address the obligation of Members of Council to treat one another, staff and

members of the public with respect and without abuse or intimidation. There is also a responsibility to ensure a work environment free of discrimination and harassment. A number of statutes overlap in this area including the *Canadian Human Rights Act*, the *Ontario Human Rights Code* and the *Occupational Health and Safety Act*.

Staff are recommending naming the section 'Discrimination and Harassment' to provide clarity. In staff's research of Integrity Commissioner reports, the highest number of complaints fall under the provision of discreditable conduct. However, complaints against these provisions generally refer to aggressive or offense behaviour rather than discrimination or harassment. The challenge in these provisions can be the subjective interpretation of the words by those who are unhappy with their political representation or staff with a complaint that might better be addressed through labour relations protocols. Many complaints against these provisions were either dismissed as frivolous or a finding could not be made due to a lack of information. A sampling of these include: a Toronto resident's complaint that a Councillor had treated him/her unfairly when they appeared before the Community Council as a deputant (the complaint was dismissed by the Integrity Commissioner); a Hamilton Councillor's Assistant alleged that their Councillor employer engaged in aggressive and belittling behaviour and claimed the Councillor asked the assistant to work on a number of questionable undertakings on behalf of the Councillor (the Integrity Commissioner's investigation uncovered that Councillor's Assistant had been operating private business during office hours and that the allegations were unfounded); a Brantford municipal staff member submitted a complaint alleging that a Councillor was verbally abusive and condescending after this Councillor telephoned her regarding an email she had sent from her work account (the email included personal views of the staff member not related to work as well as specific negative references of two Councillors, and the Integrity Commissioner found the Councillor had not violated the Code of Conduct).

There have been two complaints from staff of Members of Council that were found to be breaches of 'discreditable conduct' provisions. In each instance there was a history of a "tempestuous" employer/employee relationship leading up to a termination of the employee. In both cases, the Integrity Commissioner, while finding the respective Councillors in violation of the Code of Conduct, did not recommend sanctions. In one of the reports, the Integrity Commissioner did recommend that, as the employee had almost accumulated sufficient service to retire early, "City Council authorize the appropriate officials to work together with the complainant, COTAPSAI [association representing non-union employees] and OMERS to provide the complainant with the opportunity to retire on a full pension as of the date he/she ceased to accumulate service for pension purposes." In the other complaint, the Councillor's Executive Assistant was summarily dismissed by the Councillor and the Integrity Commissioner found the Councillor's breach to have been due to inadvertence.

This clause is also commonly used when elected officials launch complaints against one another.

Staff has attempted to provide language aimed at reducing the potential for complaints that might be more appropriately described as an expression of dissatisfaction with political representation, labour relations difficulties or councillors' interpersonal relations.

In future, the Integrity Commissioner may find that this provision is covered adequately by various other pieces of legislation and is not needed in the Code of Conduct.

### **Recommended Provision**

#### **IV. DISCRIMINATION AND HARASSMENT**

**All members of Council have a duty to treat members of the public, one another and staff with respect and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies and, where applicable, the City's *Workplace Harassment Policy*.**

##### *5. Improper Use of Influence*

This provision concerns Members of Council using the influence of her or his office for any purpose other than for the exercise of her or his official duties. In the opinion of Gregory Levine, expert panellist for the Mississauga Judicial Inquiry, improper use of influence refers to situations where, "you're inducing somebody or some people to either give consideration to doing something or to acting in a basis other than on the merits of the case."<sup>25</sup> Inappropriate behaviour includes using one's position for preferential treatment, to influence decisions to the advantage of the Member of Council or future advantage of a Member of Council.

Improper use of influence was a major topic of discussion by the expert panel of Professor David Mullan, Dean Lorne Sossin and Mr. Levine at the Mississauga Judicial Inquiry. When asked if municipalities should caution themselves to not overly restrict the ability of Members of Council to properly exercise their influence, all three experts agreed that a provision related to improper use of influence should be crafted at a high level and that it would be the role of the Integrity Commissioner to interpret what the appropriate balance is between the proper and improper use of influence.<sup>26</sup>

The expert panel also discussed how conflict of interest and improper use of influence should not be limited to immediate familial relationships of the elected official but may also include close friends or business partners. It is important that such provisions focus on the improper use of influence to the advantage of an individual who is connected to the elected official but who may not be a family member.

In February 2013, Dean Sossin spoke further on this matter as part of his expert testimony during the Standing Committee on Access to Information, Privacy and Ethics' hearings for the Statutory Review of the *Conflict of Interest Act* for the Parliament of Canada. At that time, he indicated:

"...(T)he distinction between a private interest and a legitimate public authority is pretty clear to people. For example, it may be the spouse, the sibling, or a whole bunch of proxies where we would assume you're going to be affected by your child's interest.

<sup>25</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); 5683: 2-5.

<sup>26</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010): 5685-5686.



But we know in particular situations it can be the good friend you've known since grade school. It can be the person you have a crush on and are trying to impress by wielding your authority. Why would we care about the family relationship and not the situational context in which it may be quite a distant relative? In that context it's clear, based on the information and evidence provided, that it had a material bearing on the exercise of a public authority. That to me is the issue. The act cares about conflicts.

To reduce it to this idea, that as long as I'm only biased in favour of my nephew or I'm only interested in the private relationship of a former roommate, somehow it's legitimate. To think that somehow it's okay to compromise the integrity of a public authority, as long as it's this private interest and not that one, creates cynicism and a sense of rule-bound seeking of loopholes. It just doesn't resonate with anyone's lived experience, right?

Everyone in their own life knows when they have been affected by a personal relationship. It's not usually mysterious. What it needs to be is evidence-based—it can't just be the allegation or the fact of prior association. That's what the commissioner's for: providing an objective, non-partisan, evidence-based review that's much more reliable than we would get by confining ourselves to categories...<sup>27</sup>

In his recent decision in *Magder v. Ford* (2012), Justice Hackland highlighted Toronto Integrity Commissioner Janet Leiper's report on Mayor Ford's (then Councillor Ford) violation of the Code of Conduct in relation to soliciting funds for his private football foundation. Specifically, Justice Hackland included the following excerpt of Ms. Leiper's report, noting his endorsement:

In fairness to Councillor Ford, it is common for a person who has blurred their roles to have difficulty "seeing" the problem at the beginning. It often takes others to point out the problem, especially in a case where the goal (fundraising for football programs for youth) is laudable. The validity of the charitable cause is not the point. The more attractive the cause or charity, the greater the danger that other important questions will be overlooked, including who is being asked to donate, how are they being asked, who is doing the asking, and is it reasonable to conclude that a person being asked for money will take into account the position of the person asking for the donation. Where there is an element of personal advantage (in this case, the publication of the Councillor's good works, even beyond what they had actually achieved), it is important not to let the fact that it is "all for a good cause" justify using improper methods for financing that cause. People who are in positions of power and influence must make sure their private fundraising does not rely on the metaphorical "muscle" of perceived or actual influence in obtaining donations.<sup>28</sup>

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<sup>27</sup> Dean Lorne Sossin, Study on the Statutory Review of the *Conflict of Interest Act* by the Standing Committee on Access to Information, Privacy and Ethics (February 13, 2013): 1655-1700.

<sup>28</sup> City of Toronto. *Report on Violation of Code of Conduct by Councillor Rob Ford*, prepared by J. Leiper, Integrity Commissioner. [Toronto, Ont.]: August 2010, p. 13-14.

Provincial MPPs are not to “use his or her office to seek to influence a decision made or to be made by another person so as to further the member’s private interest or improperly to further another person’s private interest.”

The City of Ottawa already has a *Conflict of Interest Policy* related to the enforcement of the *Provincial Offences Act*. The Policy specifically prohibits elected officials (as well as employees and other officials of the City of Ottawa) from influencing or interfering, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the *Provincial Offences Act*. For instance, a Member of Council may not attempt to have a constituent’s parking ticket absolved on behalf of the constituent.

Staff is, therefore, recommending a high level provision that incorporates all of the considerations identified above. Dean Sossin’s description of the similar Section 4 of the federal *Conflict of Interest Act* provides a good illustration of how staff believe this provision will work in practice:

“It’s simply leaving language that is instructive and value-based for the commissioner to interpret and apply, potentially using guidelines or scenario-based advice.

I’m convinced that the commissioner can do this and that it’s much better to do this than to itemize nieces, but not nephews, or second cousins, but not third. The challenge is transparency for the people who are going to be governed by this. A minister has the right to know, when she’s about to enter into some undertaking or transaction, whether she’s caught by this or not.

So having an advice-giving function, having scenarios in which we can discern the commissioner’s thinking on the bounds of private interest, is undoubtedly important. The legislation builds in common-sense exceptions. It’s okay, for example, if something is going to benefit a whole region or all taxpayers or all users of public transit, while at the same time affecting you in a private sense.”<sup>29</sup>

### *Experience in Other Ontario Municipalities*

This is another provision where complaints were made that might be described as more political in nature rather than ethical. In one instance, a Hamilton resident submitted a complaint of improper influence regarding comments made by a Councillor related to the new coffee and food service that would be part of renovations of City Hall. The Councillor made the comment, “I hope that Tim Horton’s wins. I think that it would be great for Hamilton.” The Integrity Commissioner found that, based on the evidence and the balance of probabilities, the Councillor’s remarks did not contravene the Code of Conduct. Furthermore, the complaint against the Councillor was deemed to be vexatious and the fee for registering the complaint was not refunded. In Toronto, a resident submitted a complaint that alleged a Councillor had improperly influenced staff on the disposition of a property that he had wanted to purchase from the City in

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<sup>29</sup> Dean Lorne Sossin, Study on the Statutory Review of the *Conflict of Interest Act* by the Standing Committee on Access to Information, Privacy and Ethics (February 13, 2013): 1655-1700.

retaliation for the resident's filing an application for a compliance audit of the Councillor's election campaign finances.

As indicated above, Toronto's Mayor Ford has been the subject of reports regarding the improper use of influence. Specifically, two reports issued by Toronto's former Integrity Commissioner related to this provision are of interest as they concern the actions of an elected official in relation to his private endeavours (the first instance being a private football foundation and the second being his private family printing business). In the first instance, then-Councillor Ford had used corporate resources (another provision) and his status as a Member of Council to solicit donations to a private football foundation. By way of sanction, he was directed to reimburse the lobbyists and corporate donor who had contributed to the foundation. The Councillor/Mayor's failure to repay the donations and to subsequently vote on a motion to overturn Council's previous decision resulted in a conflict of interest court challenge, the outcome of which is discussed earlier in this report.

In the second instance, where the Councillor had included promotional material for his private family business in invitations to a community barbeque, no sanction was recommended as the Councillor assumed responsibility for his actions and apologized to the complainant for his actions.

In light of these reports, Members of Council should be aware that there is precedent related to the improper use of influence respecting their private activities.

### **Recommended Provision**

#### **V. IMPROPER USE OF INFLUENCE**

**As an elected official, Members of Council are expected to perform their duties of office with integrity, accountability and transparency. Members of Council should not use the status of their position to influence the decision of another individual to the private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise.**

**In the same manner, and as outlined in the *Provincial Offences Act – Conflict of Interest Policy*, Members of Council shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the *Provincial Offences Act*.**

#### *6. Use of Municipal Property*

This provision refers to the use of municipal property for anything other than City of Ottawa business. Municipal property refers to property, equipment, services, supplies and/or a Member's Constituency Services Budget. Further, this provision also prohibits Members of Council from obtaining financial gain from the use of City developed intellectual property, computer programs, technological innovations or other patentable items, while an elected official or thereafter.

Examples include:

- Municipal property, including equipment, supplies or services, shall not be used other than for purposes connected with the discharge of Council duties.
- Members of Council should not obtain financial gain from the use or sale of City-developed intellectual property, computer programs, technological innovations, or other patent, trademark, copyright held by the City.

In practice, there have been a number of complaints related to improper use of municipal property. In most cases, complaints found to be violations have related to the use of municipal resources (e.g. letterhead, city email) to the advantage of personal business interests (some examples were listed in previous sections, as several of these complaints were made referencing different provisions in the Codes). Members of Council must be prudent in separating their role as an elected official from any outside business or personal activities.

Staff is recommending a provision that prohibits Members of Council from using or selling City resources for personal gain.

### **Recommended Provision**

#### **VI. USE OF MUNICIPAL PROPERTY AND RESOURCES**

**In order to fulfill their roles as elected representatives, Members of Council have access to municipal resources such as property, equipment, services, staff and supplies. No member of Council shall use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, websites, or a Member of Council Constituency Services Budget) for activities other than purposes connected with the discharge of Council duties or City business.**

**No Member shall obtain financial gain from the use or sale of City-developed intellectual property, computer programs, technological innovations, or other patent, trademark, copyright held by the City.**

#### *7. Conduct Respecting Staff*

This is a common provision in codes of conduct and typically refers to the interaction between Members of Council and staff. In doing so, reference is made to the statutory roles of Council and staff as outlined in the Section 224 and Section 227 of the *Municipal Act, 2001*, respectively.

Generally the provisions acknowledge that Members of Council will respect staff in their work as municipal employees and allow staff to make recommendations based on professional expertise without undue influence or interference from individual Members of Council.

Examples from a rules-based code include:

- Members of Council should not maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
- Members should not compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
- Members should not use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding, or influencing any staff member with the intent of interfering in staff's duties.

A values-based example is:

Staff is responsible to the whole of Council and is charged with providing advice based on political neutrality and objectivity and without undue influence from any individual member or faction of the Council. Members of Council can expect a mutually respectful relationship with staff to receive recommendations that reflect professional expertise and corporate perspective to assist Council in its decision-making.

In this instance, staff is recommending a more rules-based provision, as complaints with respect to this provision may involve other matters related to human resources and labour relations and rules may provide more clarity. In consultation with staff, the Integrity Commissioner has developed a process as part of his Complaint Protocol where alleged breaches in this area undergo an assessment to determine if they should more appropriately be dealt with by the City Manager and the City Clerk and Solicitor, and the Mayor as necessary, in consultation with the Integrity Commissioner.

### **Recommended Provision**

#### **VII. CONDUCT RESPECTING STAFF**

**The *Municipal Act, 2001* sets out the roles of Members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer, Auditor General and the Integrity Commissioner.**

**Members of Council are expected to:**

- represent the public and to consider the well-being and interests of the municipality;**
- develop and evaluate the policies and programs of the municipality;**
- determine which services the municipality provides;**
- ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;**

- (d.1) ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;
- (e) maintain the financial integrity of the municipality; and
- (f) carry out the duties of council under the *Municipal Act, 2001* or any other Act.

**Municipal staff is expected to:**

- (a) implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) carry out other duties required under the *Municipal Act, 2001* or any Act and other duties assigned by the municipality.

**City Council as a whole has the authority to approve budget, policy, governance and other such matters. Under the direction of the City Manager, city staff, and the staff of the Offices of the Auditor General and the Integrity Commissioner, serves Council as a whole and the combined interests of all members as evidenced through the decisions of Council.**

**Members of Council shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from an individual Member or group of Members of Council.**

**Members of Council should not:**

- Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
- Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
- Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties.

## **8. Expenses**

Each Member of Council is provided with a Constituency Services Budget intended to assist the Member in fulfilling their duties and running their office. In a related report, staff is recommending the approval of a Council Expense Policy. That Policy is intended to provide Members of Council with guidelines on how their Constituency Services Budgets are to be spent and includes specific requirements related to disclosure for particular expenses. Members of Council have been routinely disclosing their office

expenses with specific details regarding expenses related to hospitality, donations and sponsorships, special events and travel since January 1, 2011.

The Code of Conduct provision related to Members' expenses requires that Members adhere to the Council Expense Policy (outlined in the companion report: Council Expense Policy and Community, Fundraising and Special Events Policy ACS2013-CMR-CCB-0029) and specifically the conditions that must be met for disclosure purposes (e.g. a business meal expense must include original itemized receipt, the names of the individuals involved, the name and location of establishment, as well as date, price and purpose). Further, any Member or Councillor's Assistant found to have falsified documents will be in violation not only of the Code of Conduct but is also a breach under the Criminal Code of Canada and could lead to prosecution.

The Council Expense Policy has been included within the framework of the Code of Conduct to provide the Integrity Commissioner with jurisdiction to address questions and concerns regarding the appropriate use of a Member's Constituency Services Budget. It is not expected that the Integrity Commissioner will deal with the administrative matters related to Member's Budgets (these would continue to be dealt with by the City Clerk's Office); however, should a Member of Council or the City Clerk's Office have a question or concern regarding a particular expense, the Integrity Commissioner would be available to provide advice. Staff recommend that where either the Member or City Clerk's Office alone pose a question to the Integrity Commissioner, the advice be shared with both parties to assist in developing a collection of best practices.

### **Recommended Provision**

#### **VIII. EXPENSES**

**Members of Council are provided with a Constituency Services Budget with which to run their offices. Expenses include items such as: community events, contributions and sponsorship, office supplies and staffing. The *Council Expense Policy* outlines the specifics of how expenses, contributions and sponsorships are to be handled and disclosed.**

**Members of Council are required to adhere to the *Council Expense Policy* and related procedures and guidelines and ensure that conditions related to each expense are met.**

**Falsifying of receipts or signatures by a Member of Council or their staff is a serious breach of this Code of Conduct and the *Criminal Code of Canada* and could lead to prosecution.**

#### *9. Conduct Respecting Lobbying*

It is understood that lobbying is an inherent and legal activity in democratic governments at all levels. Members of Council, as public office holders, are routinely lobbied by a wide range of individuals. In July 2012, City Council approved the establishment of a Lobbyist Registry for the City of Ottawa. The intent of the Lobbyist

Registry is to enhance transparency for the public regarding the lobbying of Members of Council as well as City Staff.

As part of the establishment of the Lobbyist Registry, staff recommended a provision for the Code of Conduct that relates to Members of Council's obligations under the Lobbyist Registry. Specifically, Members of Council are obliged to review the Lobbyist Registry on a monthly basis to ensure that instances where they have been lobbied have been registered. In the event that a Member finds that lobbying activity has not been disclosed, it is expected that they will inform the lobbyist of their obligation to do so. If the activity remains undisclosed, the Member of Council will inform the Integrity Commissioner who will assess whether a breach has occurred and a sanction is required. Further, Members of Council will have a responsibility to ensure that those who are lobbying them are aware of their responsibilities to register as a lobbyist and will not knowingly communicate with a lobbyist who has been found to have contravened the Lobbyist Registry rules and upon whom a sanction has been applied.

The review of Code complaints did not reveal any related to this provision. However, aside from Ottawa and Toronto, no other municipality has established a mandatory lobbyist registry. Therefore, very few Ontario municipal Codes contain this provision.

*Integrity Commissioner Recommendation:*

In other jurisdictions where a lobbyist registry is in place (federal level, several provinces and the City of Toronto), it is standard practice that elected officials are not to accept any gifts, benefits, hospitality or sponsorship from lobbyists. The principle here is to ensure that companies and individuals who may be seeking to do business with the City do not do so by giving gifts or sponsorship to individuals in a position to influence the awarding of contracts or with decision making authority.

The Integrity Commissioner recommends that Members of Council and their staff be prohibited from accepting any personal gift, benefit or hospitality from lobbyists with active lobbying registrations or their registered clients or their employees, and sponsorships for community events from lobbyists with active lobbying registrations or their registered clients or their employees shall only be accepted where permitted by the *Community and Special Events Policy* (outlined in the companion report: Council Expense Policy and Community, Fundraising and Special Events Policy ACS2013-CMR-CCB-0029).

**Recommended Provision**

**IX. CONDUCT RESPECTING LOBBYING**

**Members of Council, as public office holders, are routinely approached by various individuals attempting to influence decisions before Council or under the delegated authority of the Ward Councillor. While lobbying is an acceptable practice, disclosure of lobbying activities enhances the transparency and integrity of City business.**

**In accordance with the City's Lobbyist Registry, Members of Council shall review the Lobbyist Registry on a monthly basis to confirm that instances**



where they have been lobbied on a particular matter, including the specific matter and date, have been registered. Where lobbying activity has not been disclosed, the Member shall first remind the lobbyist of the requirement to disclose and, should the activity remain undisclosed, advise the Integrity Commissioner of the failure to disclose.

Further, Members of Council should ensure that individuals who are lobbying them are aware of their requirement to register as required under the requirements of the Lobbyist Registry. Members of Council should not knowingly communicate with a lobbyist who is acting in violation of the requirements of the Registry. If a Member of Council is or at any time becomes aware that a person is in violation of the rules related to lobbying, the Member should either refuse to deal with the lobbyist or, where appropriate, either terminate the communication with the lobbyist at once or, if in the Member's judgment it is appropriate to continue the communication, at the end of the communication, draw that person's attention to the obligations imposed by the Registry and report the communication to the City Clerk and Solicitor and to the Integrity Commissioner.

Unless pre-approved by the Integrity Commissioner, the acceptance of any gift, benefit, or hospitality from lobbyists with active lobbying registrations or from their registered clients or their employees by Members of Council or their staff is prohibited.

The principle here is to ensure that companies and individuals who may be seeking to do business with the City do not do so by giving gifts or favours to people in a position to influence vendor approval or decision making.

The acceptance of sponsorships for events supported or organized by Members of Council is governed by the *Community, Fundraising and Special Events Policy*.

#### *10. Gifts, Benefits and Hospitality*

The most common provision in a code of conduct for municipal councils relates to restrictions on the receipt of gifts and benefits. These clauses are typically designed to address the negative perception of Members of Council accepting gifts and benefits from external sources. As an expert panellist at the Mississauga Judicial Inquiry, Dean Lorne Sossin described what he considers inappropriate in relation to gifts as "gifts that would to a reasonable member of the public appear to either be in gratitude for influence, to induce influence, or otherwise to go beyond the necessary and appropriate public functions involved."<sup>30</sup>

Members of Council are elected to make impartial and objective decisions, free from real or perceived influence. Generally, a gift and benefits provision requires that

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<sup>30</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); 5608-5609.

Members of Council (and their spouse, child, parent or staff member) not accept gifts, fees or personal benefits that are connected directly or indirectly with the performance of his or her duties. Gifts or benefits received as a result of protocol or social obligations, that accompany the responsibility of office, are usually exempt.

The simplest thing to do in a code of conduct would be to establish a rule that no gifts be received. However, where such a rule might be best for staff, it would not recognize the role Members of Council play in their community. Not only do elected officials receive small tokens as a gesture of thanks from community members for their help (ballcaps, t-shirts and water bottles are common), but they will receive hospitality and/or tickets to local charity and community events in the hopes that the presence of the councillor will attract other residents to the benefit of the community group. Members of Council will also receive gifts for what is commonly referred to as 'community benefit' such as sponsorships for community barbecues or charity events.

***"I think the gifts provision [in the City of Toronto] is an example of not getting that optimal balance. Because it looks like after trying to implement that for the year that I was in that role that the rules are getting in the way of councillors being able to serve their public function.... Could someone be bought with Leafs tickets is a question of fact... If it's a box and seasons tickets and we're going to have nachos and beer every Tuesday and Thursday and chat about, you know, where the city ought to be going, then maybe. If it's Marlies tickets to the Boys and Girls Club and the councillor has no role other than seeing them go to worthy people and places, clearly that is not an inappropriate gift.... But again, the question isn't --in--in that setting, I think ultimately were the rules followed, it's does it withstand public scrutiny, does it resonate with the public as an appropriate expense,"<sup>31</sup>***

*Dean Lorne Sossin, former Toronto Interim Integrity Commissioner*

A review of Ontario municipal codes of conduct reveals that all codes, both rules-based and values-based, address the issue of gifts and benefits. Rules-based codes of conduct generally prohibit the acceptance of a fee, advance, gift or personal benefit unless permitted by a specific list of exceptions. The following are the standard exceptions, found initially in the City of Toronto Code of Conduct:

- (a) Compensation authorized by law;
- (b) Such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- (c) A political contribution otherwise reported by law;
- (d) Services provided without compensation by persons volunteering their time;
- (e) A suitable memento of a function honouring the member;

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<sup>31</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010), ref. 5604-5607.

- (f) Food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the Federal government or by a foreign government within a foreign country;
- (g) Food and beverages consumed at banquets, receptions or similar events, if:
  - i. attendance serves a legitimate business purpose;
  - ii. the person extending the invitation or a representative of the organization is in attendance; and
  - iii. the value is reasonable and the invitations infrequent; and
- (h) Communication to the offices of a member, including subscriptions to newspapers and periodicals.

Values-based codes recognize the inappropriateness of accepting gifts or benefits, with the exception of those instances of protocol or social obligation. Brampton's Code of Conduct explains the public perception of accepting gifts or benefits such that "the gift, hospitality or benefit could be seen as an instrument of influence, favouritism and bias on the part of the elected official." The Code also encourages Members of Council to "continue to set a high standard of conduct and be prepared to openly disclose all gifts and benefits that have been received in carrying out their official duties." Generally, no specific exceptions or monetary limits are included in a values-based code.

Most codes of conduct identify monetary thresholds for certain exceptions (noted above) and more specifically on the value of individual gifts or benefits or the annual total from one source. There are two types of monetary thresholds that staff has observed: first, a monetary threshold that, when reached, requires the Member to submit a disclosure statement with specific details about the gift or benefit; and second, a monetary limit on certain gifts or benefits above which a gift or benefit cannot be accepted. These thresholds often apply to only certain exceptions under which a Member of Council may accept a gift (e.g. gifts received as an incident of protocol or social obligation, suitable memento for a function honouring a member, food and beverages consumed at banquets or receptions, etc.). With respect to public disclosure, the monetary thresholds vary from one municipality to another, as illustrated below:

- Waterloo: \$100 maximum per gift/benefit or from one source annually
- Windsor/Hamilton: \$200 maximum per gift/benefit or from one source annually
- Barrie: \$250 maximum per gift/benefit or from one source annually
- Toronto/Guelph: \$300 maximum per gift/benefit or from one source annually
- Mississauga/Vaughan: \$500 maximum per gift/benefit or from one source annually

With respect to maximum limits above which a gift or benefit shall not be accepted (under certain exceptions), most codes of conduct with such limits prohibit the

acceptance of individual gifts and benefits that exceed \$500 or gifts and benefits from one source per calendar year that exceed \$500.

The Province of Ontario, under the *Members' Integrity Act*, provides that a Member of Provincial Parliament "shall not accept a fee, gift or personal benefit that is connected directly or indirectly with the performance of his or her duties of office." There are four exceptions to this rule:

- (a) Compensation authorized by law;
- (b) A gift or personal benefit that is received as an incident of the protocol, customs or social obligations that normally accompany the responsibilities of office;
- (c) A fee, gift or personal benefit that is given, directly or indirectly, by or on behalf of a political party, constituency association, candidate or leadership contestant registered under the *Election Finances Act*, including remuneration or financial assistance; or
- (d) Any other gift or personal benefit, if the Commissioner is of the opinion it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the member in the performance of his or her duties.

Within 30 days after receiving a gift or personal benefit relating to exceptions (b) and (d) above that exceeds \$200 in value, MPPs must file a disclosure statement indicating "the nature of the gift or benefit, its source and the circumstances under which it was given and accepted." MPPs must also submit a disclosure statement if the total value of gifts and personal benefits received relating to exceptions (b) and (d) above exceeds \$200 from one source in any 12-month period.

At the federal level, under the *Conflict of Interest Code for Members of the House of Commons*, a Member of Parliament (MP) or a member of their family shall not "accept, directly or indirectly, any gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the Member in the exercise of a duty or function of his or her office." This rule also applies to gifts or other benefits related to attendance at a charitable or political event; and gifts or benefits received from an all-party caucus established in relation to a particular subject or interest.

The exception to this rule is "gifts or other benefits received as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the Member's position." If the gifts or benefits received by the Member under this exception have a value of \$500 or more, or if the total value of all such gifts or benefits received from one source in a 12-month period is \$500 or more, the Member shall, within 60 days after receiving the gifts or other benefits, or after that total value is exceeded, file a disclosure statement with the Conflict of Interest and Ethics Commissioner including the nature of the gifts or other benefits, their source and the circumstances under which they were given.

The provincial and federal legislation with respect to gifts and benefits is focused on the value of disclosure. Neither the provincial *Members' Integrity Act* nor the federal *Conflict of Interest Code for Members of the House of Commons* place a hard limit or maximum threshold at which a gift or benefit may not be received.

**Table 1: Disclosure of Gifts Received in Various Jurisdictions**

Jurisdiction	One Gift Amount	One Source Amount	Report Time
Federal	\$500.00	\$500.00/year	Within 60 days
Ontario	\$200.00	\$200.00/year	Within 30 days
Toronto*	\$300.00	\$300.00/year	Within 30 days

\*A hard limit of \$500 individually or annually from one source is placed on certain exceptions within the gift and benefit provision of Toronto's Code of Conduct.

Justice Cunningham, after consideration of all of the issues raised in this regard by the Ethics Panel, recommended a values-based provision as follows:

***Rule No. 2 of the Mississauga Code, which addresses the permissibility of a councillor accepting gifts and benefits, contains a fairly detailed list of exceptions. I recommend that, instead of setting out such a list, an overarching principle be articulated in the Mississauga Code: No inappropriate gifts are allowed "that would to a reasonable member of the public appear to be in gratitude for influence, to induce influence, or otherwise to go beyond the necessary and appropriate public functions involved." The simplicity of such a rule is attractive, and it could be supplemented with a detailed commentary, as well as future "cases" decided by the integrity commissioner.***<sup>32</sup>

Taking into consideration Justice Cunningham's recommendation and the experience at the municipal, provincial and federal levels, staff is recommending a hybrid provision that incorporates both the values-based principles related to gifts and benefits as well as some clarification of those circumstances where gifts, benefits or hospitality are appropriate.

Specifically, the common exceptions noted above have been incorporated along with some additional points of clarification. The proposed code specifically identifies that gifts of a nominal value (e.g. baseball cap, t-shirt, flash drive, book, etc.) are exempted from the proposed Gifts Registry. Further, sponsorships and donations for community events organized or run by a Member (or a third party on behalf of a Member) are subject to limitations under an accompanying policy related to these types of events. Finally, the proposed Code provides flexibility for the Integrity Commissioner to allow for a gift or benefit that may not fall within the identified exceptions but where it is determined that it is unlikely that receipt of the gift or benefit would give rise to an appearance that the gift or benefit was given in order to influence a Member in the performance of his or her duties.

<sup>32</sup> The Honourable Justice J. Douglas Cunningham, *Updating the Ethical Infrastructure: Report of the Mississauga Judicial Inquiry*, 3 October 2011, p. 177.

Staff is also recommending there be full disclosure of all gifts, benefits and hospitality received that, individually exceed \$200 from one source in a calendar year. Staff believes that this threshold is the middle ground of those monetary thresholds already established in other municipal jurisdictions and at the provincial and federal level. While it can be difficult to ascertain what dollar value should be attributed to a gift or benefit of nominal value, staff believes the minimum thresholds are in line with what currently exists and recognize that, above all, disclosure is the most effective way to be accountable and transparent. Dean Sossin spoke to this issue during his appearance before the Standing Committee on Access to Information, Privacy and Ethics:

***“I'm comfortable with a fairly healthy de minimis line because I don't think the public is concerned about the nickel-and-dime stuff.... My view is that the public knows the difference between Marlies tickets going to the Boys and Girls Club and box tickets at the Air Canada Centre to watch the Leafs. In other words, it's not that going to a hockey game is in one category, the potential of influencing through the giving of gifts is the mischief.***

***I'd rather we had a standard that says that, and lets the Commissioner make the determination, than these arbitrary cut-offs. For administrative convenience I can see you need a number and obviously we can't have everything resting on broad discretion. But I'd be fine with \$200, \$300, or \$400. Eyebrows will be raised at some level, and that's the level at which I would put this. I don't think that \$50 is in any reasonable person's view the kind of gift that is going to get a public official to act contrary to the public interest. That kind of benefit just doesn't ring true to me.”<sup>33</sup>***

In line with the practice at the provincial and federal levels, staff is not recommending any hard limits on gifts and benefits received. Members of Council will continue to receive appropriate gifts, and regular disclosure provides a level of transparency and accountability for the public in regards to gifts and benefits received without impeding the elected officials' ability to do their job. As Justice Bellamy observed, “[d]isclosing unnecessarily has no adverse consequences. Failing to disclose when required can be disastrous.”<sup>34</sup>

Staff recommends that an online, public Gifts Registry be established whereby Members of Council would disclose gifts, benefits and hospitality received in a pro-active and co-ordinated manner similar to the way in which City Council now discloses its office expenses. Specifically, it is recommended that Members of Council submit a quarterly disclosure statement reporting on those gifts, benefits or hospitality received that individually exceed \$200 from one source in a calendar year, including the following information:

- The nature of the gift, benefit or hospitality;

<sup>33</sup> Dean Lorne Sossin, Study on the Statutory Review of the *Conflict of Interest Act* by the Standing Committee on Access to Information, Privacy and Ethics (February 13, 2013): 1700-1705.

<sup>34</sup> The Honourable Madame Justice Denise E. Bellamy, Report on the Toronto Computer Leasing Inquiry-Toronto External Contracts Inquiry, Volume 2, ‘Good Government’, 2005, Toronto, p.40.

- Its source and date of receipt;
- The circumstances under which it was given or received;
- Its estimated value;
- What the recipient intends to do with the gift; and
- Whether the gift will at any point be left with the City.

The Code of Conduct recommended by staff also specifies that official gifts which are of significant historic or cultural value that are received on behalf of the City by the Mayor or Councillors shall become City property once the Member ceases to hold office. Gifts or mementos that are personal, of a nominal value, and which are of no particular civic interest, such as personal plaques, books, coffee mugs, pen and pencil sets, ties and scarves, may be retained by a Member of Council.

In addition to a monetary limit on gifts and benefits received, it is recommended that some specific oversight be applied to the receipt of tickets to events. Similar to the acceptance of gifts, the acceptance of tickets can appear to be a means of influence. However, the City of Ottawa is home to many types of festivals, community, cultural and sporting events and Members of Council are often expected to attend or are frequently encouraged to attend.

While the choice of venues and events a Member attends is at the discretion of the Member, Members of Council will be expected to observe the following limits when accepting tickets as a gift or benefit:

- Accepting two tickets for up to two events from one source is permitted and requires disclosure;
- Accepting any tickets for subsequent events from the same source is prohibited; and
- All event tickets of a value exceeding \$30 shall be disclosed quarterly in the Gifts Registry, along with the disposition thereof (e.g. who attended with the Member, or if donated, to whom or what organization).

These restrictions do not apply to tickets to a community event or an event that specifically relates to the Member's role(s) as described in the *Municipal Act, 2001* under sections 224, 225 and 226.1. The following are some examples where the proposed oversight would not apply:

- A Councillor invited as the Ward Councillor to a ward event (e.g. a community concert event or local fair);
- Attending a local charity benefit or awards event;
- The Mayor attending in his role as Mayor, or the Deputy Mayors or other Councillors attending on the Mayor's behalf.

Gifts, benefits and hospitality (including tickets) is an area where an Integrity Commissioner has been a valuable advisor on what is appropriate. Though annual reports from Toronto's Integrity Commissioner do not specify how many inquiries received related to specific provisions, many of the example advice offered by the Integrity Commissioner relate to the area of gifts and benefits.

Similarly, the provincial Integrity Commissioner advises MPPs to consider the following questions when offered a gift or benefit:

- How is this gift connected to my responsibilities of office?
- Can the gift or benefit reasonably be seen to be given to influence me in the exercise of my official responsibilities of office (either as MPP or Minister)?
- Is there an expectation that I will do something for the donor in return?

At the present time, no accessible, public registry appears to exist for Ontario municipalities. The City of Toronto requires that Members of Council submit a disclosure statement if a particular gift is valued at over \$300 or if the total gifts received from one source in a calendar year exceeds \$300. Mississauga Council is also required to submit a quarterly statement outlining gifts received and their value. In both cases, while the statements form part of the public record, both must be requested from the Clerk and neither is easily accessible in a public registry online.

#### Experience in Other Ontario Municipalities

It should be noted that, while gifts, hospitality and benefits are one aspect of codes of conduct that generate a significant amount of discussion, a review of forty-three Integrity Commissioner reports from Ontario municipalities revealed only two complaints related to Gift and Benefit provisions. In one instance, it was determined that a Member of Council made an error in judgment when he accepted the benefit of a constituency office at below market value. In this case, the Integrity Commissioner did not make a recommendation for sanction. In the second case, the Member was found to have breached the Gift and Benefit provision of the Code of Conduct (as well as Use of City Property, Services and Other Resources and Improper Use of Influence) when he solicited donations for a private foundation with City letterhead. The Integrity Commissioner recommended that the Member reimburse all donors and provide confirmation of this reimbursement. The Member did not agree and Council subsequently reconsidered and overturned the Integrity Commissioner's originally approved sanction.

### **Recommended Provision**

#### **X. GIFTS, BENEFITS AND HOSPITALITY**

**Members of Council are expected to represent the public and the interests of the municipality and to do so with both impartiality and objectivity. The acceptance of a gift, benefit or hospitality can imply favouritism, bias or influence on the part of the Member. At times, the acceptance of a gift, benefit or hospitality occurs as part of the social protocol or community**



events linked to the duties of an elected official and their role in representing the municipality.

Members of Council shall not accept gifts that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or otherwise to go beyond the necessary and appropriate public functions involved. For these purposes, a gift, benefit or hospitality provided with the Member's knowledge to a Member's spouse, child, or parent, or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member.

To enhance transparency and accountability with respect to gifts, benefits and hospitality, Members of Council will file a quarterly disclosure statement that will be added to a public Gifts Registry. Members of Council are required to disclose all gifts, benefits, hospitality and sponsored travel received which individually exceed \$200 from one source in a calendar year.

The disclosure statement must indicate:

- (a) The nature of the gift, benefit or hospitality;
- (b) Its source and date of receipt;
- (c) The circumstances under which it was given or received;
- (d) Its estimated value;
- (e) What the recipient intends to do with the gift; and
- (f) Whether the gift will at any point will be left with the City.

In the case of requirement (f) of the disclosure statement, those gifts received by Members of Council which have significance or historical value for the City of Ottawa shall be left with City Archives when the Member ceases to hold office.

#### **ACCEPTANCE OF EVENT TICKETS**

The City of Ottawa is home to many types of festivals, community, cultural and sports events. The City is also the host site for many federal, provincial, National Capital Commission events. Consequently, Members of Council are often expected to attend or are frequently encouraged to attend by being provided with tickets or invitations.

As with gifts, the acceptance of this kind of benefit can appear to be a means of undue influence. While the choice of venues and events they attend is entirely at the discretion of Members of Council, when accepting tickets as a gift or benefit, Members of Council shall observe the following limits:

- To further enhance transparency all tickets of a value exceeding \$30 shall be disclosed quarterly in the Gifts Registry, along with the

disposition thereof (e.g. who attended with the Member, or if donated, to whom or what organization).

- A limit of two tickets for up to two events from one source in a calendar year is permitted and requires disclosure;
- Accepting any tickets for subsequent events from the same source is prohibited.

On receiving a disclosure statement, the Integrity Commissioner, shall examine it to ascertain whether the receipt of the gift or benefit might, in his or her opinion, create a conflict between a private interest and the public duty of the Member or in consultation with the City Archivist whether the gift has significance or historical value for the City.

In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the Member to justify receipt of the gift or benefit.

Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the Member to return the gift or remit the value of any gift or benefit already consumed to the City.

The following are recognized as exceptions and do not require registration:

- (a) compensation authorized by law;
- (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- (c) a political contribution otherwise reported by law, in the case of members running for office;
- (d) services provided without compensation by persons volunteering their time;
- (e) a suitable memento of a function honouring the member;
- (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity;
- (g) food and beverages consumed at banquets, receptions or similar events, if:
  1. attendance serves a legitimate business purpose;

2. the person extending the invitation or a representative of the organization is in attendance; and
  3. the value is reasonable and the invitations infrequent;
- (h) communication to the offices of a member, including subscriptions to newspapers and periodicals;
- (i) sponsorships and donations for community events organized or run by a Member or a third party on behalf of a member, subject to the limitations set in the Council Expense Policy;
- (j) gifts of a nominal value (e.g. baseball cap, t-shirt, flash drive, book, etc.); and
- (k) any other gift or personal benefit, if the Integrity Commissioner is of the opinion it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the Member in the performance of his or her duties.

**The Gifts Registry will be updated on a quarterly basis and posted on the City's website for public viewing.**

#### *11. Election-Related Activity*

These provisions specify what Members of Council should not do with respect to political campaigns as outlined in the *Municipal Elections Act, 1996*. It is important to note that a political campaign can include not only a Member's personal campaign for office, but also other campaigns for municipal, provincial and federal office. The City of Ottawa currently has the *Election-Related Resources Policy* which clearly prohibits the use of public funds for any election-related purpose. This prohibition includes the promotion of or opposition to the candidacy of a person for elected office.

The City of Ottawa reviews the *Election-Related Resources Policy* on a regular basis, generally prior to the start of each election year.

Staff recommends that the Code of Conduct provision on Election-Related Activity reflect the principles outlined in the City's *Election-Related Resources Policy* and in the *Municipal Elections Act, 1996*.

#### *Experience in Other Ontario Municipalities*

In practice, complaints under this provision are rare and generally come from other candidates or political parties. Toronto's former Integrity Commissioner found that a Councillor had violated the provision when the Councillor referenced her achievements while in municipal office and her candidacy in a provincial election in an electronic newsletter to her constituents. When notified of the issue, the Councillor removed all references from the newsletter and the Integrity Commissioner concluded that the breach was an error in judgement. In another case, a Councillor sent out an email message to between twenty and thirty candidates for office in the 2006 City of Toronto

municipal elections. He was in his City Hall office at the time and was using his office computer. The message went out from his City of Toronto account. The purpose of the message was to encourage the candidates to use his election sign business. The message had an attachment with sign specifications and prices with a return cell phone number and another telephone number that was not the Councillor's City Hall number. The Integrity Commissioner concluded that, while the Councillor did violate Code of Conduct, it was "an error of judgment made in good faith." The Councillor sent an electronic copy of the Integrity Commissioner's report to all those candidates to whom he sent the message and extended his regrets in writing personally to the complainants.

### **Recommended Provision**

#### **XI. ELECTION-RELATED ACTIVITY**

**Members of Council are required to conduct themselves in accordance with the *Municipal Elections Act, 1996* and the City's *Election-Related Resources Policy*. The use of municipal resources, both actual municipal property and staff time, for election-related activity is strictly prohibited. The prohibition applies to both the promotion and opposition to the candidacy of a person for elected office. Election-related activity applies not only to a Member's personal campaign for office, but also other campaigns for municipal, provincial and federal office.**

#### *12. Compliance with the Code of Conduct*

***"... I think the reporting obligation needs to be in the hands and the pen of the Integrity Commissioner. How, in other words, the obligation is framed; how the breach is articulated. But in terms of sanctions beyond that, be it a reprimand, denial of salary for a period of time, or other mechanism that has a sanctioning feel to it, I share the view, that I think David [Mullan] has expressed in the past, that this is an appropriate function for council to perform, because in a sense, the main accountability role for the Integrity Commissioner is, in my view, the reporting one, the transparency one."***<sup>35</sup>

*Dean Lorne Sossin, Osgoode Law School*

On July 11, 2012, City Council approved the creation of an Integrity Commissioner for the City of Ottawa. The Integrity Commissioner is an independent expert who, in addition to being the City's Lobbyist Registrar and Meetings Investigator, is charged with oversight for the Council Code of Conduct.

As described in the June 29, 2012 *Integrity Commissioner* report (ACS2012-CMR-CCB-0034), Section 223.3 of the *Municipal Act, 2001* outlines the legislated role of the Integrity Commissioner. Generally, the Integrity Commissioner has the powers of inquiry, sanction and delegation as well as confidentiality and reporting requirements as follows:

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<sup>35</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); ref. 5653-5655.

- The Integrity Commissioner reports directly to Council on matters related to the Code of Conduct and other policies, rules or procedures related to ethics for Council and/or local boards;
- The Integrity Commissioner has the power to undertake investigations into complaints alleging contraventions of the applicable code of conduct while respecting confidentiality; and
- The Integrity Commissioner's reports are public and s/he is permitted to disclose necessary information related to the findings while maintaining confidentiality.

In addition to the Integrity Commissioner's statutory authority, Council has further assigned the Commissioner the following duties:

- Providing advice to Members of Council on ethical behaviour;
- Providing education to Members of Council on the application of a Code of Conduct for Members of Council;
- Leading the development of the policies and processes for the Office;
- Receiving complaints and conduct investigations in accordance with the Council-approved process with respect to alleged contraventions of a Code of Conduct for Members of Council;
- Providing a report on his or her findings and recommendations to City Council (which will adjudicate and impose sanctions as necessary); and
- Providing an annual summary report of complaints, investigations and advice provided and make any recommendations for any changes to the approved process.

It is expected that the largest part of the Integrity Commissioner's role will be to provide education and advice. This is considered a best practice among integrity professionals, and will assist in helping Members and the public understand how the City's accountability policies are applied in day-to-day situations. The Integrity Commissioner will provide summaries of the advice provided and post these summaries on a regular basis on Ottawa.ca to provide an understanding of how the rules are being applied.

It should be noted that the Integrity Commissioner and elected officials will both be bound by the advice provided. Therefore, if the advice provided is followed, the Integrity Commissioner would stand behind the advice should a complaint be lodged (the Complaint Protocol is discussed later in this report).

With this understood, the Code of Conduct should also incorporate a section on compliance.

As identified in the report establishing the office, the Integrity Commissioner has the power under the *Municipal Act, 2001* to recommend sanctions when it is found that a breach of the Code has occurred, with Council authorized to determine what, if any,

sanctions will be levied. Hamilton's Council has delegated its authority to impose sanctions to its Integrity Commissioner. Staff has found no other Ontario municipalities with that model, although it is more common in the United States and Justice Cunningham recommends providing this authority. Conversely, Justice Bellamy explicitly rejected this option in her report (recommendation 48),<sup>36</sup> and Gregory Levine cautioned against this approach in his advice to Hamilton's Council, noting, "[h]aving the Commissioner fulfill the role of advisor, investigator and adjudicator also carries with it the potential for institutional bias in the process."<sup>37</sup> As indicated in the earlier report, staff is recommending that Council retain the adjudication role with respect to sanctions.

Section 223.4 of the revised *Municipal Act, 2001* outlines the powers of inquiry of an Integrity Commissioner, including the authority to deal with requests to investigate suspected contraventions of the Code of Conduct. This section also specifies that the Integrity Commissioner may recommend the following penalties should the Integrity Commissioner determine a contravention has occurred:

- A reprimand; or
- Suspension of the remuneration to the local board or Council member for a period of up to 90 days.

Some municipal councils have chosen to broaden the scope of penalties to include:

- A written or verbal public apology;
- Removal from membership of a committee;
- Removal as chair of a committee;
- Repayment or reimbursement for monies received; or
- Return of property or reimbursement of its value.

The draft Code of Conduct includes specific sanctions to be recommended by the Integrity Commissioner as s/he sees fit.

### **Recommended Provision**

## **XII. COMPLIANCE WITH THE CODE OF CONDUCT**

**Members of Council are expected to adhere to the provisions of the Code of Conduct. The *Municipal Act, 2001* authorizes Council, where it has received a report by its Integrity Commissioner that, in his or her opinion, there has been a violation of the *Code of Conduct*, to impose one of the following sanctions:**

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<sup>36</sup> The Honourable Madame Justice Denise E. Bellamy, Report on the Toronto Computer Leasing Inquiry-Toronto External Contracts Inquiry, Volume 2, 'Good Government', 2005, Toronto, p.50.

<sup>37</sup> City of Hamilton. *Submission Respecting the City of Hamilton's Proposed Draft By-Law to establish the Office of the Integrity Commissioner*, prepared by Gregory J. Levine. [Hamilton, Ont.]: May 8, 2008, p. 3.

- **A reprimand; and**
- **Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.**

**The Integrity Commissioner may also recommend that Council impose one of the following sanctions:**

- **Written or verbal public apology;**
- **Return of property or reimbursement of its value or of monies spent;**
- **Removal from membership of a committee; and**
- **Removal as chair of a committee.**

**The Integrity Commissioner has the final authority to recommend any of the sanctions above or other remedial action at his or her discretion.**

### *13. Application of the Code of Conduct to Citizen Members of Council Bodies*

The proposed Code of Conduct has been developed primarily for Members of Council. However, in the same manner as Members of Council, individuals who sit on a Committee of Council also have an obligation to uphold the same ethical standards of an elected official when acting in their official capacities. Bodies, such as the Transit Commission and the Built Heritage Sub-Committee, have either final decision-making power or can influence by way of making recommendations to Committee or Council. Therefore, the same principles of accountability and transparency should apply. Furthermore, their decisions should be made with an open mind and concern for the public good and not personal benefit and without giving preferential treatment to family, friends and supporters.

By way of example, just as Members of Council will be expected to not accept gifts or benefits, so too should citizen members of bodies of Council refrain from accepting gifts or benefits that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or otherwise to go beyond the necessary and appropriate public functions involved.

As such, staff recommends the Code apply to citizen members of the Transit Commission and the Built Heritage Sub-Committee when acting in their capacity as Commissioners or Committee members.

### *14. Matters Related to the Implementation of the Code of Conduct*

#### *Effective Date*

Staff is recommending the Code of Conduct take effect on July 1, 2013. This will allow City staff, including Information Technology staff, the time required to establish the Gifts Registry and add the ability to close a lobbying file to the Lobbyist Registry. This

timeline would also enable the Integrity Commissioner a period within which to provide training on the Code and related policies and procedures to Members of Council and the citizen members of the Transit Commission and the Built Heritage Sub-Committee.

### Complaint Protocol

The complaint function is a necessary part of the enforcement of the Code. To be effective, the complaint process should be as easy as possible for residents to access<sup>38</sup> while “balanc[ing] appropriately the rights to procedural fairness that Members possess when they are the subject of a formal complaint.”<sup>39</sup>

The Complaint Protocol (Document 3) developed by the Integrity Commissioner is modeled on both the current process for the Meetings Investigator and on what the Integrity Commissioner considers to be best practices elsewhere.

As well, the Complaint Protocol includes options for the Integrity Commissioner to refer matters that are brought forward that do not relate directly to the Code of Conduct and its related processes. These options result from a review of formal complaints across the province and, although each municipality and Code of Conduct is unique, the situations identified are common to local government.

To begin, complaints about the Code of Conduct will be submitted through the Clerk’s Office in the same manner as Meetings Investigator complaints. This ensures the Integrity Commissioner is not unduly burdened by administrative matters and there are no additional costs for such strictly administrative matters. The Integrity Commissioner does not agree with Justice Cunningham’s recommendation that “... complaints made under the Mississauga Code should be submitted directly to the integrity commissioner instead of through the civic administration.”<sup>40</sup> The City has existing infrastructure to manage confidential complaints and provides the Integrity Commissioner with administrative support within present resources. It should be noted that, as in the case of the Meetings Investigator, receiving complaints is strictly an administrative function. The City Clerk and Solicitor is not involved in such complaints until the Integrity Commissioner is ready to report.

Of the 27 Ontario municipalities surveyed that have a Code of Conduct, only two have attached a fee to submitting a complaint. St. Catherine’s has a \$35 non-refundable processing fee and Hamilton, as indicated earlier, has a \$100 fee that is refundable if the Integrity Commissioner determines the complaint was made in good faith. This was designed to discourage frivolous and vexatious complaints and, since January 2010, the Integrity Commissioner has denied the refund for two of three reports. In his review of Hamilton’s draft Integrity Commissioner By-law, Greg Levine recommended that this fee be discarded as “it may deter meritorious complaints and ...the collecting of fees may

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<sup>38</sup> City of Hamilton. *Submission Respecting the City of Hamilton’s Proposed Draft By-Law to establish the Office of the Integrity Commissioner*, prepared by Gregory J. Levine. [Hamilton, Ont.]: May 8, 2008, p. 5.

<sup>39</sup> City of Toronto. *Integrity Commissioner End of Term Report*, prepared by David Mullan, Integrity Commissioner. [Toronto, Ont.]: 8 July 2008, p. 3.

<sup>40</sup> The Honourable Justice J. Douglas Cunningham, *Updating the Ethical Infrastructure: Report of the Mississauga Judicial Inquiry*, 3 October 2011, p. 179.



compromise the confidentiality of the Commissioner's process."<sup>41</sup> The Integrity Commissioner and staff are recommending there be no fee for complaints.

As is the practice with existing codes of conduct (e.g. Toronto, Vaughan, Barrie, Parry Sound, etc.), anonymous complaints will not be accepted. In essence, the existing level of confidentiality surrounding investigations of Code violations by the Integrity Commissioner in the *Municipal Act, 2001*, as well as the informal complaint process being proposed and the need to ensure procedural fairness where possible, all support the ban against anonymous complaints. Save and except where the Integrity Commissioner finds that a Member of Council or citizen member of the Transit Commission or Built Heritage Sub-Committee did not make the complaint in good faith, the identity of the complainant will be protected.

Complaints will be addressed in a timely fashion as set out below. However, the *Municipal Act, 2001* states that if the Integrity Commissioner determines there are "reasonable grounds to believe that there has been a contravention of any other Act or 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 the council" (ss. 223.8). Furthermore, if in the Integrity Commissioner's opinion, the matter is within the jurisdiction of any policy or statute, the Complainant will be referred to the body and/or process most appropriate to address the complaint.

The Integrity Commissioner establishes two kinds of complaints under the Protocol: informal and formal. The Complaint Protocol encourages individuals to use the informal complaint procedure outlined below as the first means of remedying behaviour or an activity that they believe violates the Code of Conduct. With the consent of both the Complainant and the Member, the Integrity Commissioner may engage in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner's potential role as a mediator/conciliator of issues relating to a complaint.

The informal complaint procedure is as follows:

- (a) Advise the Member that the behaviour or activity appears to contravene the Code of Conduct;
- (b) Encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behaviour or activity;
- (c) Document the incidents including dates, times, locations, other persons present, and any other relevant information;
- (d) Request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to resolve the issue;

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<sup>41</sup> City of Hamilton. *Submission Respecting the City of Hamilton's Proposed Draft By-Law to establish the Office of the Integrity Commissioner*, prepared by Gregory J. Levine. [Hamilton, Ont.]: May 8, 2008, p. 6.

- (e) If applicable, confirm to the Member the Complainant's satisfaction with the response of the Member; or, if applicable, advise the Member of the Complainant's dissatisfaction with the response; and
- (f) Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

While the Integrity Commissioner recommends pursuing an informal complaint as a first course of action, the informal process is not a precondition or a prerequisite to pursuing the formal complaint procedure.

Formal complaints will need to be based on reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct. Originally derived from criminal law, the phrase, 'reasonable and probable grounds' has been judicially interpreted as "credibility based probability." Another court concluded that a "constellation of objectively discernible facts" will underlie a foundation of reasonable grounds. Some legal authors have concluded that reasonable and probable grounds is best described as a set of facts or circumstances which would cause a person of ordinary and prudent judgment to believe beyond a mere suspicion. That said, the Supreme Court of Canada ruled in 2001 that reasonable and probable grounds "does not amount to proof beyond a reasonable doubt." A complaint must be submitted in writing, be signed and dated by an identifiable individual and accompanied by a sworn affidavit setting out the evidence in support of the allegation.

Once a formal complaint has been received, the Integrity Commissioner retains the ability to seek an informal resolution of a formal complaint as part of the fact-finding portion of that complaint. If deemed advisable, the Integrity Commissioner would be able to educate, advise and potentially facilitate a resolution between the parties without the need for a full investigation. All three members of the Mississauga Judicial Inquiry's Ethics Panel discussed this approach<sup>42</sup> and saw "the merits of [these] activities as both appropriate and consistent with the mandate of an integrity commissioner"<sup>43</sup> as long as the activities were focussed on the illumination of the facts and "consensual as between the councillor and ... the third party."<sup>44</sup>

A review of Code of Conduct complaints from a number of Ontario municipalities demonstrates that one of the major challenges with establishing a code is that the complaint mechanism can be used as a political tool to address matters that are not specifically Code of Conduct issues.

Of 43 formal reports from six municipalities (Hamilton, Aurora, Toronto, Brantford, Vaughan and Mississauga):

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<sup>42</sup> Mississauga Judicial Inquiry Transcripts (December 16, 2010); ref. 5659-6023.

<sup>43</sup> Mississauga Judicial Inquiry Transcripts (December 16, 2010); Dean Lorne Sossin, ref. 6010.

<sup>44</sup> Mississauga Judicial Inquiry Transcripts (December 16, 2010); Prof. David Mullan, ref. 5999.

- 47% were complaints from residents (20 complaints – 16 of which were either rejected, ruled as vexatious/frivolous, no jurisdiction to investigate, or the Councillor was found to not have contravened the Code);
- 16% from Council (7 complaints);
- 14% from Councillors against Councillors (6 complaints);
- 14% other (three from election candidates, one from a former councillor, one from the provincial secretary of the NDP, and one from member of Police Community Partnership); and
- 12% from Employees (5 complaints, 2 of which were former political assistants)

Therefore, the Integrity Commissioner will refer (with the consent of the Complainant) those formal complaints that should be more appropriately be dealt with through alternative channels as follows:

- Formal complaints related to the interaction of municipal staff and Members of Council would be addressed by the City Manager and the City Clerk and Solicitor, in consultation with the Mayor's Office;
- Formal complaints pertaining to matters involving current and former Councillors' Assistants would be addressed by the City Clerk and Solicitor and the Deputy City Clerk; and
- Formal complaints concerning matters between one or more Members of Council would be addressed by the Mayor or the Member Services Sub-Committee, as appropriate.

If the complaint involves a matter that is the subject of an outstanding complaint under another process (such as a court proceeding related to the *Municipal Conflict of Interest Act*, a Human Rights complaint or similar process), the Integrity Commissioner has the authority to suspend any investigation pending the result of the other process. If the Integrity Commissioner is, or becomes, of the opinion that a matter being referred is frivolous, vexatious or not made in good faith, or where there are no grounds or insufficient grounds for an investigation, the Integrity Commissioner will not conduct an investigation or will terminate an investigation in progress.

The Complaint Protocol addresses the issue of complaints and reports during an election year. In effect, it includes a moratorium on complaints and reports to Council and is based on the Complaint Protocols for the City of Toronto and the City of Vaughan.

Following the 2006 Municipal Election, Toronto City Council referred a motion to the Integrity Commissioner suggesting that the Integrity Commissioner not investigate complaints brought forward against Members of Council within six months of a municipal election and postpone an investigation until after the election has taken place.

Professor Mullan gave this particular issue a great deal of consideration and noted how difficult a question it was to answer. In his 2008 report to Council on changes to the Code of Conduct and Complaint Protocol, Professor Mullan maintained that “[w]here a Member has engaged in election-related misconduct contrary to the Code of Conduct, there is an important public interest at stake in a report on that kind of misconduct before, rather than after the election.”<sup>45</sup> However, while he felt Members of Council should not get a “free pass on possible exposure in the six months or any period prior to the election”<sup>46</sup> for possible ethical breaches, he did agree that a moratorium on complaints and investigations in an election year was justified as “there is a very real risk that Members will be confronted during an election campaign with the allegation that they are the subject of a *Code of Conduct* complaint, and have no effective way of defending himself or herself or securing timely vindication.”<sup>47</sup> The City of Toronto Code of Conduct Complaint Protocol establishes a moratorium on complaints respecting a Member who is seeking re-election from the Civic Monday until the new Council is sworn in.

Similarly, the City of Vaughan has also included a moratorium in its Code of Conduct Complaint Protocol. Specifically, in a municipal election year, no complaint shall be referred to the Integrity Commissioner after June 30<sup>th</sup> until the new Council is sworn in. In her 2011 Annual Report, Integrity Commissioner Suzanne Craig acknowledged the concerns from members of the public about the policy but noted her concurrence with Professor Mullan’s rationale for imposing the moratorium. Ms. Craig observed that activity in 2010 was limited due to the moratorium on filing complaints but that she did address various questions from Members of Council, staff and the public on matters that could have given rise to a breach of the Code of Conduct.<sup>48</sup>

City Council has already adopted an *Election-Related Resources Policy* with its own complaint process. This process is ‘active’ throughout the election period with enforcement undertaken by the Clerk’s Office. With all of these considerations in mind, the Integrity Commissioner’s Complaint Protocol establishes that no Code of Conduct complaint may be submitted or referred to the Integrity Commissioner after July 1<sup>st</sup> in any year in which a regular municipal election will be held. Any reports will be submitted at the first Council meeting following the municipal election. The Integrity Commissioner has the capacity to set a similar moratorium date for a by-election as appropriate.

The *Public Inquiries Act* guides some of the Integrity Commissioner’s protocols with respect to investigations and record-keeping. The Integrity Commissioner’s Complaint Protocol outlines the additional processes that will be followed for investigations.

Specifically, the Integrity Commissioner will provide the complaint and supporting material to the Member whose conduct is in question with a request that a written

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<sup>45</sup> City of Toronto. *Report on Issues Arising Out of Operation of Members Code of Conduct and Complaint Protocol*, prepared by David Mullan, Integrity Commissioner. [Toronto, Ont.]: June 16, 2008, p. 9.

<sup>46</sup> *Ibid*, p 10.

<sup>47</sup> *Ibid*

<sup>48</sup> City of Vaughan. *Office of the Integrity Commissioner - 2011 Annual Report*, prepared by Suzanne Craig, Integrity Commissioner. [Vaughan, Ont.]: February 2012.

response to the allegation be provided within ten business days. In turn, the Integrity Commissioner will provide a copy of that written response to the Complainant with a request for a written reply within ten business days.

After reviewing the submitted materials, the Integrity Commissioner will, if necessary, speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.

The Member who is the subject of the investigation may consult with a lawyer and charge this expense to their office budget. If the complaint is determined to have merit, the Integrity Commissioner may require the Member to reimburse these expenses to the City. If the subject of the investigation of a citizen member of the Transit Commission or of the Built Heritage Sub-Committee, the costs may be expensed to the Council administration budget through the Clerk's Office.

Should it be necessary, the Integrity Commissioner is able to provide interim reports to Council to address any instances of interference, obstruction, delay or retaliation encountered during an investigation.

As indicated earlier, the Integrity Commissioner shall retain all records related to the complaint and investigation. The *Municipal Act, 2001* specifically imposes a duty of confidentiality upon the Integrity Commissioner and anyone working under his/her direction by virtue of section 223.5(1) of the Act. This duty of confidentiality prohibits the Commissioner and anyone working under his direction (internally or externally) from disclosing any information that has come into their knowledge during course of their duties. In addition, section 223.5(3) of the Act provides that this duty of confidentiality prevails over the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA). The combined effect of these two provisions is that any information acquired by the Commissioner, or anyone working under the direction of the Commissioner, for the purposes of his/her duties under the Act is excluded from the scope of MFIPPA and no one may make an access request under Part I of MFIPPA for that information.

In June 2011, the Information and Privacy Commissioner of Ontario (IPC) reconsidered an earlier decision regarding an MFIPPA request for records of the City of Toronto's Auditor General (Order MO-2629-R). In doing so, the IPC confirmed that, in order to give effect to the confidentiality provisions of the *Municipal Act, 2001*, the records kept by the Auditor General could not be the subject of an access request made under MFIPPA. Furthermore, it was found that the records of the Auditor General could not even be accessed by City staff in order to process a request received under MFIPPA. However, had the same information existed independently within the municipality (e.g. in City staff files), then MFIPPA would apply. This decision emphasizes the importance of the Integrity Commissioner retaining his/her files. The *Municipal Act, 2001* does not address the management of the Integrity Commissioner's investigative files at the end of his/her mandate. It is suggested that the duty of confidentiality imposed by section 223.5(1) continues to apply and requires the Integrity Commissioner to safely and securely dispose of the records in a manner that does not compromise confidentiality. At no time will these records be submitted to the City.

The Complaint Protocol establishes the timelines for a report back to the Member and the Complainant to be no more than 90 days following the official receipt of the formal complaint. Should the investigation process take longer than 90 days, an interim report will be provided that advises both parties of the anticipated date the report will be available.

If the complaint is not sustained, except for in exceptional circumstances, the Integrity Commissioner will only report the results to Council as part of an annual or other periodic report.

The Integrity Commissioner will report to Council where a complaint is sustained in whole or in part. The report to Council will outline the findings, the terms of any settlement and/or any recommended corrective action. It will be placed on a Council agenda in the same manner that the previous Meetings Investigator reports have been provided: upon receipt of a report, the City Clerk and Solicitor will list, on the next regular agenda of City Council, a Notice of Intent from the Integrity Commissioner to submit a report for consideration at the following regular meeting of City Council.

Finally, the Integrity Commissioner's Complaint Protocol provides some guidelines with respect to providing Members with as much procedural fairness as is believed possible given the current deficit in the *Municipal Conflict of Interest Act* with respect to code of conduct matters before councils, specifically with respect to the right of reply or the right to be heard.

*Audi alteram partem* is a legal term that means "to hear the other side" or "the right to be heard." It is a fundamental principle of natural justice and, from a procedural perspective, means "put simply, hearing the other side of the story is critical to good decision making. In line with procedural fairness, the person concerned has a right ... to an opportunity to reply in a way that is appropriate for the circumstances [and] for their reply to be received and considered before the decision is made..."<sup>49</sup>

With respect to Integrity Commissioner reports to Council, providing for procedural fairness to a Member who is the subject of a report is an important consideration. As part of the testimony to the Mississauga Judicial Inquiry, Professor David Mullan stressed one of the arguments he made as the former Integrity Commissioner for the City of Toronto was that the Member who is the subject of the complaint ought to have the right of reply at the meeting where the report is considered.<sup>50</sup>

While the Integrity Commissioner agrees with Professor Mullan and believes that a right of reply might best be accomplished by offering the opportunity to the Member who is the subject of a report to provide written comments in much the same way that a management response is provided in the Auditor General's reports, there is also the potential that such a report could lead to a recommended sanction that would involve a financial penalty for a Member.

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<sup>49</sup> Ombudsman Western Australia, Guidelines: Procedural fairness (natural justice), <http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Procedural-fairness-guidelines.pdf>

<sup>50</sup> Mississauga Judicial Inquiry Transcripts (December 15, 2010); 5657: 11-15.

This potential financial sanction means that providing a right of reply could, at times, run counter to the current obligations of Member under Section 5.(1) of the *Municipal Conflict of Interest Act* to declare an interest on an item before Council “(w)here a member, either on his or her own behalf or while acting for, by, with or through another, has any pecuniary interest, direct or indirect, in any matter” before the council.

While it would be up to the individual Member (or a judge) who is the subject of a code of conduct report to Council to determine whether or not to declare a conflict under the *Municipal Conflict of Interest Act*, if a conflict is declared, Section 5.(1) (b) and (c) state that the Member “shall not take part in the discussion of, or vote on any question in respect of the matter; and shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question.”

Therefore, a written comment in a Code of Conduct report to Council could, in staff’s and the Integrity Commissioner’s opinion, be considered a contravention of Section 5(1) (b) and (c) of the *Municipal Conflict of Interest Act* as described above.

The recent case of *Magder v. Ford* (described earlier in this report) directly addressed the inherent challenges between providing procedural fairness to the Member who is the subject of a code of conduct complaint and these provisions of the *Municipal Conflict of Interest Act*. In fact, both Justice Hackland and the Divisional Court stated that the provisions of the *Municipal Conflict of Interest Act* (e.g. not discuss or influence a vote) apply to Code of Conduct reports before Council.

Justice Hackland addressed Professor Mullan’s testimony at the Mississauga Judicial Tribunal in his decision. In part, he states:

***I am... of the opinion that ... that s. 5(1) of the MCIA means what it clearly says and that there is no interpretive basis for excluding the operation of s. 5(1) from municipal Code of Conduct matters. Section 5 of the MCIA clearly and broadly states that where a member, “has any pecuniary interest ... in any matter,” and is present at a meeting of council, he or she is to disclose his or her interest and must neither take part in the discussion of nor vote on the matter. There is no basis on which the court can restrict or read down the meaning of “any matter” to exclude potential financial sanctions arising from Code of Conduct violations. I note parenthetically that reading down the operation of statutory provisions otherwise applicable is a constitutional remedy and no Charter issues have been raised by the parties in this proceeding. Furthermore, there is no authority for implying a right to be heard in the face of a statutory provision (such as s. 5(1) of the MCIA), which specifically denies such a right.***

***As learned commentators have noted, there may be a procedural fairness deficiency if councillors are precluded, at council meetings, from discussing potential findings or pecuniary sanctions which may be levied against them. I would regard these considerations as requiring study and possibly law reform, but they cannot provide a basis for restricting clear statutory provisions... I find that both motions related to a matter engaging the respondent’s pecuniary interests.***

**Section 4 of the MCIA sets out eleven enumerated categories of pecuniary interests which are deemed to be exempt from the application of s. 5 of the MCIA. For example, pecuniary interests that are “common with electors generally” (MCIA, s. 4(j)) are exempt, as are interests “so remote or insignificant” (MCIA, s. 4(k)) as not to be reasonably regarded as likely to influence the member. Notably absent from these exemptions is any reference to a potential pecuniary penalty which may arise from a municipal Code of Conduct violation. In my opinion, the court should be reluctant to create another exemption when, to date, the Legislature has chosen not to do so.<sup>51</sup>**

In its ruling on the *Magder v. Ford* appeal, the Divisional Court agreed with Justice Hackland:

**...[W]here a matter involving councillor misconduct is before Council and the resolution proposed engages the councillor’s pecuniary interest because of proposed financial repercussions or sanctions, s. 5(1) of the MCIA is engaged.**

**Clearly, this reading of the MCIA raises concerns about procedural fairness for the council member, as the application judge discussed in his reasons. Even though a member’s conduct is in issue and he or she faces a potential financial sanction, s. 5(1) precludes the member from making submissions to Council, which is the ultimate decision-maker. In the usual case, the duty of procedural fairness would require that an individual, faced with a sanction for misconduct, be given an opportunity to respond to the allegations made or the sanction to be imposed.**

**For this reason, Commissioner Douglas Cunningham in the report of the Mississauga Judicial Inquiry, Updating the ethical infrastructure (2011), recommended that the MCIA be amended to recognize the right of a member to make submissions where the report of an Integrity Commissioner contemplates a penalty under a code of conduct (at p. 173). However, such an amendment has not been enacted, and the courts cannot read such a right into the MCIA.<sup>52</sup>**

As referenced by the Divisional Court, Justice Cunningham had previously identified the need for the provincial government to provide for some kind of right of reply to Members who are the subject of a Code of Conduct complaint in the *Municipal Conflict of Interest Act*, stating as follows:

**“It is quite apparent to me that careful consideration must be given to how the Municipal Conflict of Interest Act and any given municipal code of conduct are going to mesh. I believe it necessary that the MCIA be given clear primacy but that the limits of the Act be specified.**

<sup>51</sup> *Magder v. Ford*, CV-12-448487 Ontario Superior Court of Justice, Nov. 26, 2012; Para. 23-25.

<sup>52</sup> *Magder v. Ford Appeal*, Ontario Superior Court of Justice Divisional Court 560/12, Jan. 25, 2013; Para. 38-40.



#### **Recommendation 14**

***I recommend that the Municipal Conflict of Interest Act be amended to include a provision stating explicitly that nothing in the Act prevents a member of council from making submissions regarding a finding in a report by the integrity commissioner or regarding the imposition of a penalty under a municipal code of conduct. It is important that members of council be afforded procedural fairness under municipal codes of conduct.***<sup>53</sup>

Until such time as the *Municipal Conflict of Interest Act* is amended to address matters of procedural fairness related to Code of Conduct issues at Council, the Integrity Commissioner does not have the ability to provide Members with a general right of reply within reports to Council on Code of Conduct violations of a pecuniary (financial) nature.

That being said, the Divisional Court ruling does provide some opportunity to provide a right of reply to Members on some Code of Conduct reports to Council.

Specifically, the Court ruled:

***In our view, it is not correct, as the respondent argues and the application judge appears to have accepted (Reasons at para. 15), that a member is precluded from speaking whenever a Code violation is before the Council, just because Council has the power to impose a financial penalty. The pecuniary interest of the member must be a real one. Unless the report of the Integrity Commissioner recommends an economic sanction, or if there is some real likelihood that a financial penalty is contemplated, the member is not precluded from speaking to a report on his conduct. There is no reason to preclude a member from speaking to a report recommending a reprimand or requesting an apology. Given the importance of procedural fairness and especially the right to be heard, the individual should not be precluded from speaking, absent a real financial interest that has crystallized.***

***Moreover, since a pecuniary interest results in a prohibition against participation in a public meeting which, if not obeyed, attracts a severe penalty, it is appropriate to strictly interpret the pecuniary interest threshold.***<sup>54</sup>

Therefore, the Integrity Commissioner's Complaint Protocol provides that, if the report of the Integrity Commissioner does not recommend sanctions of a pecuniary (financial) nature, such as the replacement of property or its value, of monies spent or suspension of remuneration paid to the Member, then the Member shall have a written right of reply to be included in the Integrity's Commissioner's report to Council.

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<sup>53</sup> The Honourable Justice J. Douglas Cunningham, *Updating the Ethical Infrastructure: Report of the Mississauga Judicial Inquiry*, 3 October 2011, p. 173.

<sup>54</sup> *Magder v. Ford Appeal*, Ontario Superior Court of Justice Divisional Court 560/12, Jan. 25, 2013; Para. 42-43.

If the Integrity Commissioner's report to Council recommends sanctions of a pecuniary (financial) nature, then the Member shall not have a right of reply. In lieu of a right of reply, the Integrity Commissioner shall invite the Member to submit a written response to the report directly to the Integrity Commissioner, for the Commissioner's information only.

The Integrity Commissioner recommends the Complaint Protocol take effect on July 1, 2013 to coincide with the Code of Conduct for Members of Council. No complaints will be received before July 1, 2013.

### Regular Reviews for the Code of Conduct and Related Policies

The Code of Conduct and its related policies are part of Council's Accountability Framework and are intended to evolve over time. These are first steps. The Code and the related policies will be reviewed and renewed on an annual basis by the Integrity Commissioner, and as part of the regular governance reviews.

Building in regular reviews is as important to the success of an overall Accountability Framework as establishing one. As Dean Sossin indicated in his expert testimony during the Standing Committee on Access to Information, Privacy and Ethics' hearings for the Statutory Review of the *Conflict of Interest Act* for the Parliament of Canada:

***In my discussions and review of the literature, I don't think it's fair to say there is a jurisdiction out there that is the gold standard... I think it's fair to say it's always intended to be a work-in-progress. I'm not sure there is a perfect balance that will work in every context and for all time, here or anywhere. I think the best one could say is this: as we find the elements that don't appear to be working, is there a fix or a coherence that can be brought to it? This is why we have these parliamentary reviews and why it's so important to not simply let legislation stand without a chance to look at how it's working and how it can be improved.<sup>55</sup>***

### RURAL IMPLICATIONS

There are no rural implications associated with this report.

### CONSULTATION

All Members of Council were consulted separately by the City Clerk and Solicitor and the Deputy City Clerk and by the Integrity Commissioner.

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<sup>55</sup> Dean Lorne Sossin, Study on the Statutory Review of the *Conflict of Interest Act* by the Standing Committee on Access to Information, Privacy and Ethics (February 13, 2013): 1700-1705.

## COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide report.

## LEGAL IMPLICATIONS

There are no legal impediments to Committee and Council's consideration of this report including the adoption of a Code of Conduct. Both the respective provisions in the *Municipal Act, 2001* (being Sections 223.1 to 223.8) and the relevant case law have been referenced earlier in this report.

## RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

## FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

## ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

## ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with this report.

## TECHNOLOGY IMPLICATIONS

Information Technology Services staff have estimated that the changes to the Lobbyist Registry outlined in this report will require two to three days of effort to develop and test.

## TERM OF COUNCIL PRIORITIES

This report supports the Term of Council Priority related to Governance, Planning and Decision Making (GP1: Improve the public's confidence in and satisfaction with the way Council works).

SUPPORTING DOCUMENTATION

Document 1: Draft Code of Conduct for Members of Council

Document 2: Survey of Codes of Conduct and Integrity Commissioners

Document 3: Complaint Protocol

DISPOSITION

Upon Council approval, the City Clerk and Solicitor Department will work with the ITS Department to update the Lobbyist Registry application. The Integrity Commissioner will provide training on the Code and related policies and procedures to Members of Council and the citizen members of the Transit Commission and the Built Heritage Sub-Committee in advance of the July 1<sup>st</sup>, 2013 effective date.

## CODE OF CONDUCT FOR MEMBERS OF COUNCIL

### STATUTORY PROVISIONS REGULATING TO CONDUCT

This Code of Conduct is a complement to the existing legislation governing the conduct of Members of Council.

The following federal, provincial legislation governs the conduct of Members of Council:

- the *Municipal Act, 2001*;
- the *Municipal Conflict of Interest Act*;
- the *Municipal Elections Act, 1996*;
- the *Municipal Freedom of Information and Protection of Privacy Act*;
- the *Provincial Offences Act*;
- the *Ontario Human Rights Code*;
- the *Criminal Code of Canada*; and
- the by-laws and policies of Council as adopted and amended from time to time.

### APPLICATION

This Code of Conduct applies to Members of Ottawa City Council, and citizen members of the Transit Commission and the Built Heritage Sub-Committee when acting in their official capacity.

### DEFINITIONS

In this Code of Conduct, the terms “child”, “parent” and “spouse” have the same meanings as in the *Municipal Conflict of Interest Act*.

“child” means a child born within or outside marriage and includes an adopted child and a person whom a parent has demonstrated a settled intention to treat as a child of his or her family;

“parent” means a person who has demonstrated a settled intention to treat a child as a member of his or her family whether or not that person is the natural parent of the child;

“spouse” means a person to whom the person is married or with whom the person is living in a conjugal relationship outside marriage.

## I. GENERAL INTEGRITY

- Members of Council are committed to performing their functions with integrity, accountability and transparency.
- Members of Council are responsible for complying with all applicable legislation, by-laws and policies pertaining to their position as an elected official.
- Members of Council recognize that the public has a right to open government and transparent decision-making.
- Members of Council shall at all times serve and be seen to serve the interests of their constituents and the City in a conscientious and diligent manner and shall approach decision-making with an open mind.
- Members shall avoid the improper use of the influence of their office and shall avoid conflicts of interest, both apparent and real.
- Members of Council shall not extend in the discharge of their official duties preferential treatment to any individual or organization if a reasonably well-informed person would conclude that the preferential treatment was solely for the purpose of advancing a private or personal interest.
- For greater clarity, this Code does not prohibit members of Council from properly using their influence on behalf of constituents.

## II. CONFIDENTIAL INFORMATION

By way of their office, Members of Council acquire confidential information from a variety of different sources including confidential personal information related to constituents who have contacted their office. Confidential information includes information in the possession of, or received in confidence by the City, that the City is either prohibited from disclosing, or is required to refuse to disclose under the *Municipal Freedom of Information and Protection of Privacy Act* (“MFIPPA”). Members of Council shall not use information that is obtained in his or her capacity as a member and that is not available to the general public to further or seek to further the member’s private interest or improperly to further or seek to further another person’s private interest.

In accordance with the rules under MFIPPA and the *Procedure By-law*, Members of Council shall not:

- (c) Where a matter has been discussed *in camera*, and where the matter remains confidential, disclose the content of the matter or the substance of

the deliberations of the *in camera* meeting (Subsection 38 (d) of the *Procedure By-law*); and

- (d) Disclose or release by any means to any member of the public, any confidential information acquired by virtue of their office, in either oral or written form, except when required by law or authorized by Council to do so.

### III. CONDUCT AT COUNCIL/COMMITTEE MEETINGS

Members of Council shall conduct themselves with decorum at all City Council and Committee meetings in accordance with the provisions of the *Procedure By-law* (Section 38) being:

No member shall:

- (f) Speak disrespectfully of the Reigning Sovereign or the Lieutenant-Governor of any province, or of a fellow member of Council or staff;
- (g) Use offensive words or unparliamentary language;
- (h) Speak on any subject other than the subject in debate;
- (i) Where a matter has been discussed *in camera*, and where the matter remains confidential, disclose the content of the matter or the substance of the deliberations of the *in camera* meeting;
- (j) Disobey the Rules of Procedure, or a decision of the Mayor or of the Council on questions of order or practice or upon the interpretation of the Rules of Procedure.

### IV. DISCRIMINATION AND HARASSMENT

All members of Council have a duty to treat members of the public, one another and staff with respect and without abuse, bullying or intimidation, and to ensure that their work environment is free from discrimination and harassment. The *Ontario Human Rights Code* applies and, where applicable, the City's *Workplace Harassment Policy*.

### V. IMPROPER USE OF INFLUENCE

As an elected official, Members of Council are expected to perform their duties of office with integrity, accountability and transparency. Members of Council should not use the status of their position to influence the decision of another individual to the

private advantage of oneself, or one's parents, children or spouse, staff members, friends, or associates, business or otherwise.

In the same manner, and as outlined in the *Provincial Offences Act – Conflict of Interest Policy*, Members of Council shall not attempt to influence or interfere, either directly or indirectly, financially, politically or otherwise with employees, officers or other persons performing duties under the *Provincial Offences Act*.

## **VI. USE OF MUNICIPAL PROPERTY AND RESOURCES**

In order to fulfill their roles as elected representatives, Members of Council have access to municipal resources such as property, equipment, services, staff and supplies. No member of Council shall use, or permit the use of City land, facilities, equipment, supplies, services, staff or other resources (for example, City-owned materials, websites, or a Member of Council Constituency Services Budget) for activities other than purposes connected with the discharge of Council duties or City business.

No Member shall obtain financial gain from the use or sale of City-developed intellectual property, computer programs, technological innovations, or other patent, trademark, copyright held by the City.

## **VII. CONDUCT RESPECTING STAFF**

The *Municipal Act, 2001* sets out the roles of Members of Council and the municipal administration, including specific roles for statutory officers such as the Chief Administrative Officer, Clerk, Treasurer, Auditor General and the Integrity Commissioner.

Members of Council are expected to:

- (a) represent the public and to consider the well-being and interests of the municipality;
- (b) develop and evaluate the policies and programs of the municipality;
- (c) determine which services the municipality provides;
- (d) ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;
- (d.1) ensure the accountability and transparency of the operations of the municipality, including the activities of the senior management of the municipality;



- (e) maintain the financial integrity of the municipality; and
- (f) carry out the duties of council under the *Municipal Act, 2001* or any other Act.

Municipal staff is expected to:

- (a) implement council's decisions and establish administrative practices and procedures to carry out council's decisions;
- (b) undertake research and provide advice to council on the policies and programs of the municipality; and
- (c) carry out other duties required under the *Municipal Act, 2001* or any Act and other duties assigned by the municipality.

City Council as a whole has the authority to approve budget, policy, governance and other such matters. Under the direction of the City Manager, city staff, and the staff of the Offices of the Auditor General and the Integrity Commissioner, serves Council as a whole and the combined interests of all members as evidenced through the decisions of Council.

Members of Council shall be respectful of the role of staff to provide advice based on political neutrality and objectivity and without undue influence from an individual Member or group of Members of Council.

Members of Council should not:

- Maliciously or falsely injure the professional or ethical reputation, or the prospects or practice of staff;
- Compel staff to engage in partisan political activities or be subjected to threats or discrimination for refusing to engage in such activities; or
- Use, or attempt to use, their authority or influence for the purpose of intimidating, threatening, coercing, commanding or influencing any staff member with the intent of interfering in staff's duties.

## VIII. EXPENSES

Members of Council are provided with a Constituency Services Budget with which to run their offices. Expenses include items such as: community events, contributions and sponsorship, office supplies and staffing. The *Council Expense Policy* outlines the specifics of how expenses, contributions and sponsorships are to be handled and disclosed.

Members of Council are required to adhere to the *Council Expense Policy* and related procedures and guidelines and ensure that conditions related to each expense are met.

Falsifying of receipts or signatures by a Member of Council or their staff is a serious breach of this Code of Conduct and the *Criminal Code of Canada* and could lead to prosecution.

## **IX. CONDUCT RESPECTING LOBBYING**

Members of Council, as public office holders, are routinely approached by various individuals attempting to influence decisions before Council or under the delegated authority of the Ward Councillor. While lobbying is an acceptable practice, disclosure of lobbying activities enhances the transparency and integrity of City business.

In accordance with the City's Lobbyist Registry, Members of Council shall review the Lobbyist Registry on a monthly basis to confirm that instances where they have been lobbied on a particular matter, including the specific matter and date, have been registered. Where lobbying activity has not been disclosed, the Member shall first remind the lobbyist of the requirement to disclose and, should the activity remain undisclosed, advise the Integrity Commissioner of the failure to disclose.

Further, Members of Council should ensure that individuals who are lobbying them are aware of their requirement to register as required under the requirements of the Lobbyist Registry. Members of Council should not knowingly communicate with a lobbyist who is acting in violation of the requirements of the Registry. If a Member of Council is or at any time becomes aware that a person is in violation of the rules related to lobbying, the Member should either refuse to deal with the lobbyist or, where appropriate, either terminate the communication with the lobbyist at once or, if in the Member's judgment it is appropriate to continue the communication, at the end of the communication, draw that person's attention to the obligations imposed by the Registry and report the communication to the City Clerk and Solicitor and to the Integrity Commissioner.

Unless pre-approved by the Integrity Commissioner, the acceptance of any gift, benefit, or hospitality from lobbyists with active lobbying registrations or from their registered clients or their employees by Members of Council or their staff is prohibited.

The principle here is to ensure that companies and individuals who may be seeking to do business with the City do not do so by giving gifts or favours to people in a position to influence vendor approval or decision-making.

The acceptance of sponsorships for events supported or organized by Members of Council is governed by the *Community, Fundraising and Special Events Policy*.

## **X. GIFTS, BENEFITS AND HOSPITALITY**

Members of Council are expected to represent the public and the interests of the municipality and to do so with both impartiality and objectivity. The acceptance of a gift, benefit or hospitality can imply favouritism, bias or influence on the part of the Member. At times, the acceptance of a gift, benefit or hospitality occurs as part of the social protocol or community events linked to the duties of an elected official and their role in representing the municipality.

Members of Council shall not accept gifts that would, to a reasonable member of the public, appear to be in gratitude for influence, to induce influence, or otherwise to go beyond the necessary and appropriate public functions involved. For these purposes, a gift, benefit or hospitality provided with the Member's knowledge to a Member's spouse, child, or parent, or to a Member's staff that is connected directly or indirectly to the performance of the Member's duties is deemed to be a gift to that Member.

To enhance transparency and accountability with respect to gifts, benefits and hospitality, Members of Council will file a quarterly disclosure statement that will be added to a public Gifts Registry. Members of Council are required to disclose all gifts, benefits, hospitality and sponsored travel received which individually exceed \$200 from one source in a calendar year.

The disclosure statement must indicate:

- (g) The nature of the gift, benefit or hospitality;
- (h) Its source and date of receipt;
- (i) The circumstances under which it was given or received;
- (j) Its estimated value;
- (k) What the recipient intends to do with the gift; and
- (l) Whether the gift will at any point will be left with the City.

In the case of requirement (f) of the disclosure statement, those gifts received by Members of Council which have significance or historical value for the City of Ottawa shall be left with City Archives when the Member ceases to hold office.

### **ACCEPTANCE OF EVENT TICKETS**

The City of Ottawa is home to many types of festivals, community, cultural and sports events. The City is also the host site for many federal, provincial, National Capital Commission events. Consequently, Members of Council are often expected to attend or are frequently encouraged to attend by being provided with tickets or invitations.

As with gifts, the acceptance of this kind of benefit can appear to be a means of undue influence. While the choice of venues and events they attend is entirely at the discretion of Members of Council, when accepting tickets as a gift or benefit, Members of Council shall observe the following limits:

- To further enhance transparency all tickets of a value exceeding \$30 shall be disclosed quarterly in the Gifts Registry, along with the disposition thereof (e.g. who attended with the Member, or if donated, to whom or what organization).
- A limit of two tickets for up to two events from one source in a calendar year is permitted and requires disclosure;
- Accepting any tickets for subsequent events from the same source is prohibited.

On receiving a disclosure statement, the Integrity Commissioner, shall examine it to ascertain whether the receipt of the gift or benefit might, in his or her opinion, create a conflict between a private interest and the public duty of the Member or in consultation with the City Archivist whether the gift has significance or historical value for the City.

In the event that the Integrity Commissioner makes that preliminary determination, he or she shall call upon the Member to justify receipt of the gift or benefit.

Should the Integrity Commissioner determine that receipt was inappropriate, he or she may direct the Member to return the gift or remit the value of any gift or benefit already consumed to the City.

The following are recognized as exceptions and do not require registration:

- (a) compensation authorized by law;
- (b) such gifts or benefits that normally accompany the responsibilities of office and are received as an incident of protocol or social obligation;
- (c) a political contribution otherwise reported by law, in the case of members running for office;
- (d) services provided without compensation by persons volunteering their time;
- (e) a suitable memento of a function honouring the member;
- (f) food, lodging, transportation and entertainment provided by provincial, regional and local governments or political subdivisions of them, by the federal government or by a foreign government within a foreign country, or by a conference, seminar or event organizer where the member is either speaking or attending in an official capacity;
- (g) food and beverages consumed at banquets, receptions or similar events, if:
  1. attendance serves a legitimate business purpose;
  2. the person extending the invitation or a representative of the organization is in attendance; and

3. the value is reasonable and the invitations infrequent;
- (h) communication to the offices of a member, including subscriptions to newspapers and periodicals;
- (i) sponsorships and donations for community events organized or run by a Member or a third party on behalf of a member, subject to the limitations set in the Council Expense Policy;
- (j) gifts of a nominal value (e.g. baseball cap, t-shirt, flash drive, book, etc.); and
- (k) any other gift or personal benefit, if the Integrity Commissioner is of the opinion it is unlikely that receipt of the gift or benefit gives rise to a reasonable presumption that the gift or benefit was given in order to influence the Member in the performance of his or her duties.

The Gifts Registry will be updated on a quarterly basis and posted on the City's website for public viewing.

## **XI. ELECTION-RELATED ACTIVITY**

Members of Council are required to conduct themselves in accordance with the *Municipal Elections Act, 1996* and the City's *Election-Related Resources Policy*. The use of municipal resources, both actual municipal property and staff time, for election-related activity is strictly prohibited. The prohibition applies to both the promotion and opposition to the candidacy of a person for elected office. Election-related activity applies not only to a Member's personal campaign for office, but also other campaigns for municipal, provincial and federal office.

## **XII. COMPLIANCE WITH THE CODE OF CONDUCT**

Members of Council are expected to adhere to the provisions of the Code of Conduct. The *Municipal Act, 2001* authorizes Council, where it has received a report by its Integrity Commissioner that, in his or her opinion, there has been a violation of the *Code of Conduct*, to impose one of the following sanctions:

- A reprimand; and
- Suspension of the remuneration paid to the member in respect of his or her services as a member of Council or a local board, as the case may be, for a period of up to 90 days.

The Integrity Commissioner may also recommend that Council impose one of the following sanctions:

- Written or verbal public apology;

- Return of property or reimbursement of its value or of monies spent;
- Removal from membership of a committee; and
- Removal as chair of a committee.

The Integrity Commissioner has the final authority to recommend any of the sanctions above or other remedial action at his or her discretion.

### Survey of Codes of Conduct and Integrity Commissioners

Municipality	Code of Conduct	Integrity Commissioner	Cost
Town of Aurora (L)	<a href="#">Yes</a>	No David Tsubouchi resigned (Jan. 2011) David Nitkin (Jun. 2009 – Aug. 2009)	\$60K – annual cap
City of Barrie (S)	<a href="#">Yes</a>	<a href="#">Yes</a> – John Craig	\$1,000/year retainer \$125/hour, + expenses
City of Brampton (L)	<a href="#">Yes</a>	Yes – ADR Chambers	Budget of \$150K for 2011
City of Brantford (S)	<a href="#">Yes</a>	Yes – <a href="#">Robert Swayze awarded contract on December 19, 2011</a>  G. Rust D'Eye acted as interim Integrity Commissioner	<ul style="list-style-type: none"> <li>• 4 reports over two years \$50K</li> <li>• Expect \$15-20K going forward</li> </ul>
City of Burlington (L)	<ul style="list-style-type: none"> <li>• <a href="#">Code of Practice</a></li> <li>• <a href="#">Members doing business with the City</a></li> </ul>		
Town of Caledon (L)	<a href="#">Yes</a> \$125 refundable fee	<a href="#">Yes</a> - John Fleming	Staff report indicated that proposal was to have a \$10,000 annual retainer which is to be drawn down at an hourly rate of \$350. Upon having used the \$10,000 retainer, Mr. Fleming will continue to bill at \$350/hr. Staff will negotiate a first year retainer at \$7,500
City of Cambridge (L)	No	No	
Town of Carleton Place (L)	<a href="#">Yes</a>	Yes – Robert J. Swayze	
Municipality of Chatham-Kent (S)	<a href="#">Yes</a> (Part of Procedure By-law)	No – “Within 30 days after receiving the complaint, Council shall determine if it will appoint an Integrity Commissioner pursuant to section 223.3 of the Municipal Act to investigate the complaint”	
Durham Region (U)	No	No	

Township of Galway-Cavendish & Harvey (L)	<a href="#">Yes</a>	No George Kydd did not renew contract for personal reasons (Oct. 2008 - May 2009)	Approx. \$3K spent
City of Greater Sudbury (S)	<a href="#">Yes</a> (Appendix B to Procedure By-law)	No	
City of Guelph (S)	<a href="#">Yes</a>	Yes - Robert Swayze	\$5,000 annual retainer, plus an hourly rate
Halton Region (U)	<a href="#">Yes</a> (Appendix 'A' to Procedure By-law)	No	
City of Hamilton (S)	<a href="#">Yes</a> \$100 refundable fee	<a href="#">Yes</a> - Earle D. Basse	G. Rust D'Eye \$128.6K (2 reports) E. Basse \$1,500 per month retainer and \$150 per hour
City of Kingston (S)	<a href="#">Yes</a>	No	
City of Kitchener (L)	<a href="#">Yes</a>	<a href="#">Yes</a> – Greg Levine	\$2,000 annual retainer, plus \$150 hourly rate
Municipality of Lambton Shores (L)	<a href="#">Yes</a> (\$100 refundable application fee)	RFP issued with April 10, 2013 deadline	
City of London (S)	<a href="#">Yes</a>	No – complaint process and option for judicial investigation if allegations are serious	N/A
City of Markham (L)	No	No - Council has requested that staff report back on options with respect to an Integrity Commissioner and Lobbyist Registrar.	
Municipality of Meaford (L)	<a href="#">Yes</a>	No – new process provides that any investigation of a potential breach of the Code is first investigated by the Mayor (or Deputy Mayor if the complaint is against the Mayor), after which a report will then be prepared and council will meet to discuss the issue.  Former Integrity Commissioner Dianne Charlton resigned June 2008.	Former IC remuneration: \$1K annual retainer fee and \$100 daily per diem + expenses (telephone, computer costs, etc)



City of Mississauga (L)	<a href="#">Yes</a>	<a href="#">Yes</a> – Robert J. Swayze (July 2012)	\$100K (budgeted by City) \$24,000 annual retainer \$1,500 block fee (for providing educational sessions of half a day) \$280 per hour (for services outside the above)
District Municipality of Muskoka (U)	Code of Ethics and Conduct Policy that applies to Council and staff	No	
Niagara Region (U)	Yes (Appendix 'A' to Procedure By-law)	No – <a href="#">Rejected appointment of Integrity Commissioner</a>	
Township of the North Shore(S)	<a href="#">Yes</a>	<a href="#">No</a> – In June 2011, Council cancelled the appointment of the Integrity Commissioner (given that the position is not mandated)  Former Integrity Commissioner was Ben Pascuzzi	
Town of Oakville (L)	<a href="#">Yes</a>	<a href="#">Yes</a> - Robert Swayze  Note – Council holds authority to direct that an investigation be conducted	2011 Investigation - \$11,600
City of Orillia (S)	<a href="#">Yes</a>	<a href="#">Yes</a> – Suzanne Craig	
City of Oshawa (L)	<a href="#">Council Charter</a>	No - no repercussions to not adhering to the Charter	
Town of Parry Sound (S)	<a href="#">Yes</a>	<a href="#">Yes</a> –Suzanne Craig	
Peel Region (U)	No	No	
City of Peterborough (S)	No	No	
City of Pickering (L)	<a href="#">Yes</a>	<a href="#">Yes</a> – Suzanne Craig (Nov. 2012)	
Municipality of Port Hope (L)	<a href="#">Yes</a>	<a href="#">Yes</a> –Robert Swayze (December 2011)  John Maddox (2008 – 2011)	Former IC remuneration: \$3,000/year retainer fee \$125/hour, plus expenses

Town of Richmond Hill (L)	<a href="#">Yes</a>	<a href="#">Yes</a> – David Tsubouchi	\$25K \$40K annual budget
City of St. Catharines (L)	<a href="#">Yes</a> \$35 processing fee	No - Protocol is to engage an integrity commissioner on a as needed basis if a Council Code of Conduct complaint is submitted	
City of Thunder Bay (S)	No	No	
City of Toronto (S)	<a href="#">Yes</a>	<a href="#">Yes</a>	Approx. \$214K
City of Vaughan (L)	<a href="#">Yes</a>	<a href="#">Yes</a> – Suzanne Craig	\$200K
City of Waterloo (L)	<a href="#">Yes</a>	Yes – Greg Levine	\$2000 annual retainer and \$150 per hour and expenses if investigation required
Region of Waterloo (U)	No	No	
Municipality of Wawa (S)	<a href="#">Yes</a>	<a href="#">Yes</a> - Ben Pascuzzi	
Township of West Lincoln (L)	<a href="#">Yes</a>	<a href="#">Yes</a> – Greg Levine	
Town of Whitby (L)	No	No	
Township of Wilmot (L)	<a href="#">Yes</a>	<a href="#">Yes</a> – John Craig	
City of Windsor (S)	<a href="#">Yes</a>	Yes - <a href="#">Bruce Elman</a> (August 2011) E. Basse (Sept. 2008 to Dec. 2009)	\$48K (2009)
City of Woodstock (L)	<a href="#">Yes</a>	No  Former Integrity Commissioner Dr. Ian Hunter (2007-2009)	
York Region (U)	No	No	

\*As of April 17, 2013 (not a comprehensive listing)

(S) – Single Tier      (L) – Lower Tier      (U) – Upper Tier

**COMPLAINT PROTOCOL  
FOR COUNCIL CODE OF CONDUCT**

**PART A: INFORMAL COMPLAINT PROCEDURE**

Any individual who identifies or witnesses behaviour or activity by a sitting Member of Council, a citizen member of the Transit Commission or of the Built Heritage Subcommittee, that appears to be in contravention of the Code of Conduct for Members of Council (the “Code of Conduct”) may address the prohibited behaviour or activity themselves in the following manner:

- (a) Advise the Member that the behaviour or activity appears to contravene the Code of Conduct;
- (b) Encourage the Member to acknowledge and agree to stop the prohibited behaviour or activity and to avoid future occurrences of the prohibited behaviour or activity.
- (c) Document the incidents including dates, times, locations, other persons present, and any other relevant information;
- (d) Request the Integrity Commissioner to assist in informal discussion of the alleged complaint with the Member in an attempt to resolve the issue;
- (e) If applicable, confirm to the member your satisfaction with the response of the Member; or, if applicable, advise the Member of your dissatisfaction with the response; and
- (f) Consider the need to pursue the matter in accordance with the formal complaint procedure outlined in Part B, or in accordance with any other applicable judicial or quasi-judicial process or complaint procedure.

Individuals are encouraged to pursue this informal complaint procedure as the first means of remedying behaviour or an activity that they believe violates the Code of Conduct. With the consent of both the complaining individual and the Member, the Integrity Commissioner may participate in any informal process. The parties involved are encouraged to take advantage of the Integrity Commissioner’s potential role as a mediator/conciliator of issues relating to a complaint. However, the informal process is not a precondition or a prerequisite to pursuing the formal complaint procedure outlined in Part B.

## **PART B: FORMAL COMPLAINT PROCEDURE**

### **Formal Complaints**

1. Any individual who identifies or witnesses behaviour or an activity by a sitting Member of Council, a citizen member of the Transit Commission or of the Built Heritage Sub-Committee, that they believe is in contravention of the Code of Conduct for Members of Council, may file a formal complaint in accordance with the following conditions:
  - (a) All complaints shall be made in writing and shall be dated and signed by an identifiable individual.
  - (b) The complaint must set out reasonable and probable grounds for the allegation that the Member has contravened the Code of Conduct. A supporting affidavit setting out the evidence in support of the allegation must also be included.
  - (c) If the complainant is a Member of Council, a citizen member of the Transit Commission or of the Built Heritage Sub-Committee or the staff person of a Member of Council, their identity shall not be protected if the Integrity Commissioner finds that the complaint was not made in good faith.
  - (d) City Council, the Transit Commission or the Built Heritage Sub-Committee may also file a complaint and/or request an investigation of any of its membership by public motion.

### **Filing of Complaint and Classification by Integrity Commissioner**

2. The complaint shall be filed with the City Clerk and Solicitor 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.

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

### **Complaints Outside Integrity Commissioner Jurisdiction**

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 complaint procedure under another Council policy, the Integrity Commissioner shall advise the complainant in writing as follows:

#### **Criminal Matter**

- (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 appropriate Police Service.

### ***Municipal Conflict of Interest Act***

(b) If the complaint on its face is regarding non-compliance with the *Municipal Conflict of Interest Act* as opposed to the Code of Conduct, the complainant shall be advised to review the matter with the complainant's own legal counsel.

### ***Municipal Freedom of Information and Protection of Privacy Act***

(c) If the complaint is more appropriately addressed under the *Municipal Freedom of Information and Protection of Privacy Act*, the complainant shall be advised that the matter must be referred to the City Clerk and Solicitor for Access and Privacy review.

### **Other Policy Applies**

(d) If the complaint seems to fall under another policy, the complainant shall be advised to pursue the matter under such policy.

### **Lack of Jurisdiction**

(e) If the complaint is, for any other reason not within the jurisdiction of the Integrity Commissioner, the complainant shall be so advised and provided with any additional reasons and referrals as the Integrity Commissioner considers appropriate.

### **Matter Already Pending**

(f) If the complaint is in relation to a matter which is subject to an outstanding complaint under another process such as a court proceeding related to the *Municipal Conflict of Interest Act*, a Human Rights complaint or similar process, the Integrity Commissioner may, in his/her sole discretion and in accordance with legislation, suspend any investigation pending the result of the other process.

### **Periodic Reports to Council**

4. The Integrity Commissioner shall report to Council semi-annually during the first year, and annually thereafter. In his/her report to Council, he/she shall report on all complaints received and on their disposition (including complaints deemed not to be within the jurisdiction of the Integrity Commissioner).

### **Refusal to Conduct Investigation**

5. 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 and, where this becomes apparent in the course of an investigation, shall terminate the investigation.

## Opportunities for Resolution

6. Following receipt and review of a formal complaint, or at any time during the investigation, where the Integrity Commissioner believes that an opportunity to resolve the matter may be successfully pursued without a formal investigation, and both the complainant and the Member agree, efforts may be pursued to achieve an informal resolution.

The Integrity Commissioner may also decide during his investigation that complaints relating to the following matters may not be Code of Conduct issues and may more appropriately be dealt with through other channels. With the consent of the complainant, the Integrity Commissioner may refer complaints as follows:

- (a) Formal complaints related to the interaction of municipal staff and Members of Council may be handled by the City Manager and the City Clerk and Solicitor, in consultation with the Mayor's Office.
- (b) Formal complaints pertaining to matters involving current and former Councillors' Assistants may be handled by the City Clerk and Solicitor and the Deputy City Clerk.
- (c) Formal complaints concerning matters between one or more Members of Council may be handled by the Member Services Sub-Committee.

## Investigation

7. (1) The Integrity Commissioner will proceed as follows, except where otherwise required by the *Public Inquiries Act*:
- (a) Provide the complaint and supporting material to the member whose conduct is in question with a request that a written response to the allegation be provided within ten business days; and
  - (b) Provide a copy of the response provided to the complainant with a request for a written reply within ten business days.
- (2) If necessary, after reviewing the submitted materials, the Integrity Commissioner may speak to anyone, access and examine any other documents or electronic materials and may enter any City work location relevant to the complaint for the purpose of investigation and potential resolution.
- (a) The Member who is the subject of the investigation may consult with a lawyer and charge this to their office budget. If the complaint is determined to have merit, the Integrity Commissioner may require the Member to reimburse these expenses to the City. If the subject of the investigation of a citizen member of the Transit Commission or of the Built Heritage Sub-Committee, the costs may be expensed to the Council administration budget through the Clerk's office.

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

(4) The Integrity Commissioner shall retain all records related to the complaint and investigation.

### **No Complaint Prior to Municipal Election**

8. Notwithstanding any other provision of this Protocol, no complaint may be referred to the Integrity Commissioner, or forwarded by the Clerk for review and/or investigation after the last meeting of Council in July, in any year in which a regular municipal election will be held.

### **Recommendation Report**

9. (1) The Integrity Commissioner shall report to the complainant and the member generally no later than 90 days after the official receipt of the complaint. If the investigation process takes more than 90 days, the Integrity Commissioner shall provide an interim report and must advise the parties of the date the report will be available.
- (2) Where the complaint is sustained in whole or in part, the Integrity Commissioner shall report to Council outlining the findings, the terms of any settlement and/or any recommended corrective action.
- (3) The City Clerk shall give a copy of the report to the complainant and the Member whose conduct is concerned. Subject to the conditions in paragraph (5) below, that Member shall have the right of reply when the report is considered by Council.
- (4) Where the complaint is not sustained, except for in exceptional circumstances, the Integrity Commissioner shall not report to Council the result of the investigation except as part of an annual or other periodic report.
- (5) If the report of the Integrity Commissioner recommends sanctions of a pecuniary nature, such as the replacement of property or its value, of monies spent or suspension of remuneration paid to the Member, then the Member shall not have a right of reply. In lieu of a right of reply, the Integrity Commissioner shall invite the Member to submit a written response to the report.

### **Member not Blameworthy**

10. 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 judgment made in good faith, the Integrity Commissioner may so state in the report and may make appropriate recommendations pursuant to the *Municipal Act, 2001*.

**Report to Council**

11. Upon receipt of a report, the Clerk shall indicate, on the next regular agenda of City Council, Notice of Intent from the Integrity Commissioner to submit a report for consideration at the following regular meeting of City Council.

**No Reports Prior to Municipal Election**

12. Notwithstanding Section 8 or any other provision of this Protocol, the Integrity Commissioner shall not make any report to Council or to any other person after the last City Council meeting of June in any year in which a regular municipal election is to be held, until the first official meeting of Council following the election.

**Duty of Council**

13. Council shall consider and respond to the report at the next meeting of Council after the day the report is laid before it. Subject to the conditions of paragraph 9(5) above, the Member who is the subject of the complaint shall have the right of reply at the meeting where the report is considered

**Public Disclosure**

14. (1) The Integrity Commissioner and every person acting under his or her jurisdiction shall preserve confidentiality where appropriate and where this does not interfere with the course of any investigation, except as required by law and as required by this complaint protocol.  
  
(2) The Integrity Commissioner shall retain all records related to the complaint and investigation.  
  
(3) At the time of the Integrity Commissioner's report to Council, the identity of the person who is the subject of the complaint shall not be treated as confidential information if the Integrity Commissioner finds that a breach has occurred.  
  
(4) All reports from the Integrity Commissioner to Council will be made available to the public on [ottawa.ca](http://ottawa.ca).