



Corporate Report

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General Committee

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DATE: November 9, 2009

TO: Chair and Members of General Committee
Meeting Date: November 18, 2009

FROM: Mary Ellen Bench, BA, LLB, CS
City Solicitor

SUBJECT: **Code of Conduct for Mayor and Members of Council and
Integrity Commissioner**

- RECOMMENDATION:**
- 1) That the report from the City Solicitor dated November 9, 2009 on the Code of Conduct for Mayor and Members of Council and the Integrity Commissioner be received for information.
 - 2) That if Council wishes to establish a code of conduct for its members and the office of the integrity commissioner, a committee of council be established, with assistance from staff, to prepare a code of conduct for Members of Council and to determine the mandate, duties, parameters and implementation of such a code of conduct and an integrity commissioner for the City based on the principles as set out in the report from the City Solicitor dated November 9, 2009.

BACKGROUND: City Council at its meeting of October 28, 2009 passed Resolution 0245-2009 that requests staff to bring a report back to Council which would provide a range of options to put in place a code of conduct that would apply to the Mayor and Members of Council of the Corporation of the City of Mississauga, and to provide a range of options for Council to consider with respect to the retention of an Integrity Commissioner to deal with matters that may arise with the Council of

the Corporation of the City of Mississauga. This report addresses these two items in the resolution.

COMMENTS:**Code of Conduct for Members of Council**

Pursuant to section 223.2(1) of the *Municipal Act, 2001*, a municipality may establish a code of conduct for members of council or local boards of the municipality. Section 223.2 (2) adds that a by-law cannot provide that a breach of the code of conduct is guilty of an offence. Further, according to the *Municipal Conflicts of Interest Act*, municipal codes of conduct cannot deal with pecuniary conflicts of interest.

The legislation does not specify any further requirements on what codes of conduct are required to address. It is thus up to council to determine the ethical standards to be applied to its members.

Various cities in Ontario have implemented codes of conduct for members of council. They include: Toronto, Vaughan, Hamilton, Kitchener, Aurora, Windsor, Woodstock, Port Hope, London and St. Catherines. A review of their codes of conduct shows several common elements:

General integrity

Most codes of conduct surveyed start off with broad general statements of integrity expected of members of council in the performance of their duties. These provisions may include requirements that the members are to conduct themselves in a diligent and conscientious manner and to uphold the integrity and transparency of council. These "catch-all" provisions would capture any behaviour that may be considered inappropriate for a public office holder but that is not captured in the more specific provisions contained in the code of conduct.

Confidential information

Every code of conduct surveyed stipulates rules regarding confidentiality, such that members are to keep confidential information strictly confidential. Confidentiality of matters discussed in closed meetings is currently required under the City's Council Procedure Bylaw. A code of conduct can elaborate on this requirement and extend the general application of confidentiality to all confidential information, whether members of council have gained

access to such information in a closed meeting discussion or not.

Gifts

Similar to the confidentiality provisions, all municipalities surveyed include detailed provisions in their codes of conduct on acceptance of gifts by members of council. Such rules are designed to address the fact that gifts may sometimes be received and attendance at social functions may sometimes be required in the course of carrying out their duties as elected officials. The rules on gifts generally prescribe against a member of council accepting any gifts or benefits in connection (directly or indirectly) with the performance of his/her duties except in certain limited circumstances. Codes of conduct may also require the disclosure of gifts and benefits received in those situations in a public registry. Some municipalities prescribe disclosure rules based on value of the gifts or benefits. For example, in Toronto, any food or beverages consumed at business events over \$300 must be reported to the Integrity Commissioner.

Conduct at council and committee meetings

These provisions are included in the various codes of conduct surveyed to address the decorum members of council should observe at council and committee meetings with each other, with members of the public, and with staff.

General provisions regarding decorum at council and committee meetings are currently in existence under the City's Council Procedure By-Law. A code of conduct may further elaborate on such rules of conduct.

Election campaign work

These provisions generally specify what members of council should and should not do with respect to participating in their own or other political campaigns. For example, most municipalities include provisions in their codes of conduct such as no campaign activities on municipal property during business hours, and prohibition of the use of services from municipal employees or contractors for election campaigns during business hours.

General improper activities

These provisions typically address the activities members of council should refrain from undertaking during their term of office. For

example, members should not use the influence of their office for anything other than official duties, or act as a paid agent before council or committee, or leverage influence over hiring of family members, or give preferential treatment to any person with whom the members have a financial interest etc.

Conduct respecting staff

Many codes of conduct also require members of council to respect staff of their work as municipal employees making recommendations based on professional expertise, without undue influence from individual or groups of members of council. Examples of such provisions include prohibitions against: compelling staff to engage in partisan political activities; coercing staff with intent to interfere with staff's duties; or falsely or maliciously injuring the professional or ethical reputation of staff.

Use of municipal property

These provisions outline the restrictions in the use of municipal property during the member's term of office. For example, municipal property cannot be used for any other purposes except for official duties; or they cannot be used by the member to obtain financial gain. Examples of municipal property would include City-owned fax machines and computers located councillor home or constituency offices.

Compliance & reprisals for failure to comply with code of conduct

Under the *Municipal Act*, if an integrity commissioner reports to council that a breach of a code of conduct has been committed by a member of council, council may impose sanctions against the member, which can either be a reprimand or a suspension of remuneration for up to 90 days. Many of the codes of conduct surveyed incorporate these legislative sanctions.

In Toronto and Vaughan, in addition to these sanctions as provided in the *Municipal Act*, the integrity commissioner may also recommend to council to take any of the following actions: removal from membership of a committee; removal as chair of a committee; repayment or reimbursement of moneys received; return of property or reimbursement of its value; request for apology to council and/or complainant.

Complaint Procedure

In addition to the code of conduct, many municipalities have also adopted a complaint procedure for any person (another member of council, staff or members of the public) to launch a complaint against a member of council for inappropriate behaviour under the code of conduct. Some municipalities put this procedure in their codes of conduct, while others establish a separate policy.

Some municipalities adopt both an informal and a formal complaint procedure. The informal procedure is designed to address infractions quickly with no or minimal involvement of the integrity commissioner. Informal protocols include having the complainant advise the member of council directly of the latter's breach of the code of conduct and encourage him/her to cease and remedy a prohibited behaviour, or request the integrity commissioner to mediate or provide advice on allegations of breaches. Formal procedures include filing a complaint in writing with supporting documentation such as a sworn affidavit that sets out the evidence in support of the claim. Some municipalities also include standardized forms and set procedures on how to file the complaint.

Some municipalities also include a limitation in timing for filing of a complaint to the integrity commissioner. For example, in Vaughan, complaints must be filed within six (6) months of the alleged violation. As well, the Cities of Vaughan and Toronto prohibit referral of a complaint of a member of council after June 30th and Labour Day, respectively, in an election year until after the elections.

Developing a Code of Conduct for Mississauga

If council wishes to adopt a code of conduct for its members, staff can assist in the drafting. However, given that such a code is a self-imposed set of ethical standards for members of Council, it is recommended that it be prepared by a committee of council with staff's assistance. In many municipalities, a committee of councillors and staff is struck to undertake the review of existing conduct and accountability policies or the creation of a new code of conduct. For example, the City of Woodstock struck a code of conduct review committee comprised of the Mayor, two Councillors, the City Clerk and the CAO to review the municipality's code.

Some municipalities may also include their integrity commissioner (if one is already in place), as well as members of the public in such committees. The City of Vaughan's Integrity Commissioner took a leading role in the creation of its recently enacted code of conduct for members of council (effective as of November 2, 2009), working closely with its Accountability and Transparency Committee. It is also interesting to note that Vaughan's Accountability and Transparency Committee includes two resident members in addition to the Mayor and two members of council, the City Manager, the City Solicitor, and the City Clerk. In recruiting its citizen members, Vaughan gave preference to those with background in law and/or ethics. In Vaughan's case, both citizen members have experience on various ethics committee in their careers. If Council wishes to include members of the public in addition to members of council and staff in such a committee to review and create a code of conduct, council may want to similarly consider including members with knowledge and expertise in law and ethics. Someone in the academia or with experience in ethics committees/boards may fit such profile.

Integrity Commissioner

To enforce a code of conduct, Council may wish to establish the office of an integrity commissioner on a part time basis. Pursuant to section 223.2 of the *Municipal Act, 2001*, a municipality may appoint an integrity commissioner who would be responsible for applying the code of conduct and any procedures, rules or policies governing ethical behaviour of members of council or local board in an independent manner. As such, until such a code or rules and policies exist, the commissioner has no investigative mandate. Some municipalities assign greater responsibilities to their integrity commissioners, such as requiring him/her to assist in policy development, provide advice to members of council, answer inquiries from staff and citizens, and provide ethics education and training.

As noted above, Vaughan's Integrity Commissioner was intimately involved in developing the recently enacted code of conduct for its council members. She also provided training to members of council on the new ethical code. According to the 2009 annual report from Toronto's interim Integrity Commissioner, he not only assisted in the development of various accountability and ethics policies, but also provided 50 informal advices and 67 formal written advices to members of council between July 2008 and June 2009, and responded

to 195 enquiries from citizens and 25 from staff during the same period of time. (According to the 2009 annual report, some of the citizen calls were regarding complaints outside of the office's mandate.)

Among the municipalities surveyed, Toronto has had the longest history of having an office of the integrity commissioner (since 2004) and as such has received the highest volume of work so far. Most other municipalities have only created their offices of the integrity commissioner recently in the last year or so and as such, have not handled many inquiries or complaints.

Part Time Office

All of the municipalities surveyed have created the integrity commissioner position as a part time position, or on a retainer basis with their services being called on an as-needed basis. As such, in the latter case, integrity commissioners of those municipalities work from their own offices and attend the municipality premises when needed. In Toronto, even though the office has had the greatest volume of work among all the municipalities, the integrity commissioner is still a part time position but occupies a permanent office with a part time assistant providing administrative support.

Powers of the Integrity Commissioner to conduct an inquiry

When an integrity commissioner conducts an inquiry as to whether a member of council has contravened the code of conduct, s/he is generally permitted to conduct the investigation as s/he sees fit, within the parameters of the delegated authority given to him/her by the municipality. For example, municipalities generally do not prescribe detailed rules on how their integrity commissioners are to conduct their investigations, but timelines for when the commissioner is required to report back and reporting requirements are usually specified. An Integrity Commissioner however, cannot go backwards in time and investigate matters prior to the adoption of a Code of Conduct.

In investigating alleged breaches of the code of conduct, under the *Municipal Act*, the integrity commissioner may choose to conduct an inquiry using the powers under Parts I and II of the *Public Inquiries Act*. If the integrity commissioner chooses to conduct such a hearing, the hearing shall be held in public unless the commissioner finds that

matters involving public security or intimate financial or personal matters may be disclosed, and that in the latter case, the desirability of avoiding disclosure of such intimate details outweighs that of having a hearing in public. The integrity commissioner would also have the right to summon witnesses to testify on oath or to furnish evidence, but only in the context of a public inquiry.

No public inquiry under the *Public Inquiries Act* has yet been held by any municipal integrity commissioner. So far, integrity commissioners have been conducting investigation into alleged breaches of codes of conduct without the need to carry out a full public hearing and summoning witnesses. Despite so, each year, Toronto sets aside budget for its integrity commissioner's office in case of the need of such hearings.

Access to Information

The *Municipal Act* also provides that in conducting an inquiry, the commissioner is entitled to access all records, accounts, books and documents belonging to or used by the municipality that the commissioner feels are relevant to the investigation and necessary for an inquiry. This would include all relevant staff and councillor e-mails, blackberry PINS, correspondences, or any other records and documentation related to or generated in the course of carrying out their duties in the City. Thus, if Council elects to create the office of an integrity commissioner, the current Elected Officials' Records Corporation Policy, which defines and distinguishes between official and constituency records, should be reviewed to ensure consistency with this legislative requirement.

Sanctions for Breaches of Code of Conduct

As noted above, sanctions may be imposed by council if an integrity commissioner finds a breach of the code of conduct. As such, integrity commissioners may be requested to recommend the appropriate sanctions against a member of council found in breach. While not the norm, Hamilton's council delegated authority to its Integrity Commissioner to directly impose sanctions on members who breach the code of conduct.

Duty of Confidentiality

In addition, regardless of whether the commissioner is conducting an investigation into alleged breaches of the code of conduct or providing advice to individual councillors on ethics or otherwise carrying out

his/her mandate, the *Municipal Act* requires the integrity commissioner and every person acting under his/her instructions to preserve the secrecy with respect to all matters that come to his/her knowledge in the course of carrying out his/her duties. This secrecy requirement prevails over the requirements of disclosure under the *Municipal Freedom of Information and Protection of Privacy Act*. As well, this duty of confidentiality extends to reports that the commissioner may provide to council from time to time. If the commissioner provides a periodic report to council on his or her activities, s/he may summarize advice given but not disclose confidential information that could identify the individual concerned.

However, information may be disclosed in a criminal proceeding as may be required by law or otherwise in accordance with the *Municipal Act*. For example, if in the course of his/her investigation, the integrity commissioner determines on reasonable grounds that there has been a contravention of any other legislation or the Criminal Code, the commissioner must immediately refer the matter to the appropriate authorities, suspend the inquiry until police investigation is complete and the charge has been finally disposed of, and report the suspension to council.

Also, if the commissioner reports to council on his/her opinion specifically on whether a member has contravened the code of conduct, and not the periodic reporting that s/he may be required to submit to council, the Commissioner is allowed to disclose anything in the report that s/he deems necessary for the purposes of the report.

Under the *Municipal Act*, all reports received from the integrity commissioner by the municipality are to be made available to the public.

Periodic Reporting

As discussed above, Council may require that the integrity commissioner provide it with periodic reports of the commissioner's activities. In fact, most municipalities that have established the office of the integrity commissioner impose such reporting requirements, in addition to specific reports on investigations conducted on alleged contraventions of codes of conduct. For example, Toronto's Integrity Commissioner is required to provide an annual report on his/her activities as well as the budget of the office for the year. The report

also includes examples of advices on ethics provided over the year, with personal and other confidential information redacted, such that it can also provide educational value to members of council in general.

Term of Office

Council is free to determine the term of office for the integrity commissioner. The term of the offices varies from municipality to municipality. Toronto's first integrity commissioner was appointed in 2004 and concluded his term in August 2008. Recently, the city has conducted a policy review of the framework of all of its accountability offices (Ombudsman, Auditor General, Lobbyist Registrar, and Integrity Commissioner) and has determined that all future integrity commissioners shall have a non-renewable term of five years. It was also determined that the term may be extended by its council in exceptional circumstances by a 2/3 vote of all members of council. Other municipalities have established terms of office ranging from one to four years, with limited renewable terms. The City of London is currently setting up the office and is looking at potentially setting the term for 4 years, and having the term staggered over council terms.

Recruitment

Many cities establish a committee of members of council to select the integrity commissioner, some being the same committee as the one charged with the mandate of reviewing/establishing the code of conduct as discussed above. In Toronto, the Mayor chairs a committee with three councillors and an independent recruiter firm to select the most recent commissioner. The City of Vaughan's Accountability and Transparency Committee made recommendations on the roles and responsibilities, and the parameters of the office of the integrity commissioner when the office was originally being set up, and handled the recruitment. The City of London's Accountability and Transparency Task Force (comprised of members of council and staff) is currently in the process of implementing the office and will likely be involved in the recruitment of the commissioner.

Many cities require or give preference to applicants with a legal/ethics/public administration background. Current commissioners in Toronto, Vaughan, Hamilton, and Kitchener are all lawyers. As well, some have a background in academia in law and/or ethics in addition to their legal background. The City of Hamilton initially also required that the integrity commissioner be a retired judge, but due to

the lack of response, it has now re-established the criteria to allow anyone with municipal law experience to apply. Discussions with staff at Vaughan, however, indicate that there was a lot of interest in the recruitment with a good selection of well-qualified professionals (retired judges, adjudicators, and lawyers) applying for its position.

In addition to a background in law and/or ethics, some common qualification criteria for candidates of the position include: comprehensive experience in managing investigation activities, including the application of alternative dispute resolution methods; having no involvement in political campaigning/ endorsements, or related conflicts of interest; extensive knowledge of relevant legislation such as the *Municipal Act* and the *Municipal Conflict of Interest Act*; municipal law adjudication experience; proven impartiality and neutrality; and having no employment or other financial interest in the work undertaken by the municipality.

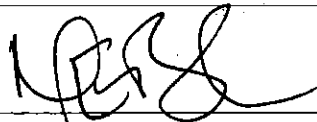
FINANCIAL IMPACT: The Cities of Vaughan and Toronto have allocated a budget of \$200,000 for the office of the integrity commissioner. Part of the budget included funding that has been aside in case of the need for major inquiries to be conducted under the terms of the *Public Inquiries Act* (i.e. holding hearings on alleged infractions of ethical conduct). As none have been conducted in Toronto as yet, the actual expenditures usually fall short of the total budgeted amount. For example, according to Toronto's Integrity Commissioner's Annual Report, the office's actual expenditure between July 2008 and June 2009 was \$157,342.

In other municipalities such as Kitchener, Woodstock and Port Hope, their integrity commissioners are retained on an as needed basis with hourly rates, ranging from \$125 to \$250 per hour.

CONCLUSION: A code of conduct may be established by a municipality to outline minimum standards of behaviour for members of council in carrying out their duties. This report highlights some of the general elements of the codes of conduct adopted by various municipalities and that may be considered by Council if Council wishes to create a code for its members. As noted above, it is up to council of each municipality to determine its own standards to be applied to its members. As such, council is free to include any standards of ethics as it deems fit.

If Council wishes to enact a code of conduct for its members, Council may also wish to establish the office of an integrity commissioner to provide advice to individual members of council with respect to the code of conduct, assess and investigate complaints of alleged infractions of the code, adjudicate on violations of the code including the recommendation of sanctions against the offending member, and/or provide educational training and reports to members of council on ethics and the code. An integrity commissioner reports to Council and acts independently and impartially in carrying out his/her mandate.

This report outlines the general framework of issues that Council may wish to consider in establishing a code of conduct for its members and the office of the integrity commissioner. Given that more detailed discussions and planning are required in order to create an appropriate code of conduct for members of council and to determine the mandate and parameters of the role of the integrity commissioner, it is recommended that Council establishes a committee of Council, with staff's assistance, to review the issues provided in this report and make recommendations to Council on these two matters based on the principles as outlined.



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