

Legal Opinion to Toronto Integrity Commissioner – 2005

“Therefore we conclude that the statement of principles in the Code of Conduct do not 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”

A Member shall:

- (a) only be entitled to have access to information in the possession of the City that is relevant to matters before Council or a Committee or that is relevant to their role as Members of Council. Otherwise, they have the same access rights to information as any member of the public. and
- (b) have a continuing obligation to keep information confidential, even if the Member ceases to be a Member.

No Member shall:

(b) disclose, release or publish by any means, including social media any confidential information acquired by virtue of his or her office, in any form, except when required or authorized by Council or otherwise by law to do so;

(d) use confidential information for personal or private gain or benefit, or for the personal or private gain or benefit of any other person or body;.

- * No Member shall use their status as a Member of Council to improperly influence the actions or decisions of staff or others to the private advantage of the Member or his or her family, employees or business associates.

8.1 Only Council as a whole and no single Member including the Mayor, has the authority to direct employees, approve budgets, policy, and other such matters, unless specifically authorized by Council.

8.3 No Member shall:

- (a) maliciously or falsely impugn the professional or ethical reputation of any staff;
- (b) compel staff to engage in partisan political activities, or subject staff to threat or discrimination for refusing to engage in such activities; or
- (c) use their authority or influence to threaten, intimidate, or coerce staff or improperly interfere the lawful exercise of the duties of staff.

9.1 No Member shall accept a gift or personal benefit that is connected directly or indirectly with the performance of their duties unless authorized by one of the exceptions below.

Exceptions:

- (a) gifts received as an incident of protocol or social obligation that normally accompany the responsibilities of elected office;
- (f) services provided without compensation by persons volunteering their time;

- * Exceptions (Cont'd):
- * (g) a suitable memento of a function with nominal value, honouring the Member or the City;
- * (i) food, beverages and/or admission fees provided by banquets, receptions or similar events if attendance is the result of protocol or social obligation consistent with the responsibilities of office, and the person extending the invitation has done so infrequently and that person or a representative of the organization is in attendance;

- * 10.1 A Member shall:
 - (a) only use City property for activities relevant to their role as Members of Council; and
 - (b) not obtain any personal financial gain or advantage from the use of City property.

- * 11.1 Members may not use City resources for any type of political activity during a municipal election and at any other time, including promoting or opposing the candidacy of any person to elected office in any municipal, provincial and federal campaign.

“Any behaviour, conduct or comment by a Member that is directed at or is offensive to another person:

- i) on the grounds of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, age, handicap, sexual orientation, marital status, or family status, as well as any other grounds under the provisions of the Human Rights Code; or
- ii) which is reasonably perceived by the recipient as an intention to bully, embarrass, intimidate or ridicule the recipient.”

- * 15.2 (d) Requests from members of council and of local boards for advice respecting their obligations under the code of conduct applicable to the member.
- * (e) Requests from members of council and of local boards for advice respecting their obligations under a procedure, rule or policy of the municipality or of the local board, as the case may be, governing the ethical behaviour of members.
- * (f) Requests from members of council and of local boards for advice respecting their obligations under the Municipal Conflict of Interest Act.

- * 16.1 A complaint that a member has contravened the Code may be initiated by any person, any Member of Council, or by Council as follows:
 - (a) a complaint shall be made in writing and shall be sent directly to the Integrity Commissioner by mail, e-mail, fax or courier;
 - (b) a complaint must be signed and dated by the complainant who shall be an identifiable individual (complaints may not be submitted by any group, organization or corporation);

16.3 The Integrity Commissioner shall undertake an initial review of a complaint that has been filed and shall determine whether the matter relates to non-compliance with the Code or other corporate policy applying to Members. The Integrity Commissioner shall have no power or jurisdiction to investigate or otherwise deal with the complaint, if the complaint is not alleging a contravention of the Code or other corporate policy applying to Members or if the complaint relates to the following matters:

- (i) Criminal Matter
- (ii) Freedom of Information
- (iii) Municipal Elections Act

If the Integrity Commissioner is of the opinion that a complaint is frivolous or vexatious or is not made in good faith, or that there are no grounds or insufficient grounds for conducting an investigation, the Integrity Commissioner may choose not to investigate or, if already commenced, may terminate any investigation, or may dispose of the complaint in a summary manner.

Before finalizing a report to Council which recommends sanctions, the Integrity Commissioner shall provide the Member with the basis for their findings and any sanctions that may be recommended. The Member shall have the opportunity to comment further, either in writing, verbally or in person to the Integrity Commissioner on the proposed findings and sanctions.

16.1 Upon conclusion of a complaint investigation, the Integrity Commissioner shall:

- (a) issue a report to Council on the findings of the investigation and, where there is a finding of contravention of the Code, the report shall contain the detailed findings, any recommended sanctions, or any settlement; and
- (b) provide a copy of the final report to the Member at the same time as the final report is made available to the Clerk and to the complainant at the same time as the report becomes public.

Penalties

(5) The municipality may impose either of the following penalties on a member of council or of a local board if the Commissioner reports to the municipality that, in his or her opinion, the member has contravened the code of conduct:

1. A reprimand.
2. Suspension of the remuneration paid to the member in respect of his or her services as a member of council or of the local board, as the case may be, for a period of up to 90 days. 2006.

An elector, as defined in section 1 of the *Municipal Conflict of Interest Act*, or a person demonstrably acting in the public interest may apply in writing to the Commissioner for an inquiry to be carried out concerning an alleged contravention of section 5, 5.1 or 5.2 of that Act by a member of council or a member of a local board.

5 (1) Where 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 and is present at a meeting of the council or local board at which the matter is the subject of consideration, the member,

- (a) shall, prior to any consideration of the matter at the meeting, disclose the interest and the general nature thereof;
- (b) shall not take part in the discussion of, or vote on any question in respect of the matter; and
- (c) shall not attempt in any way whether before, during or after the meeting to influence the voting on any such question. R.S.O. 1990, c. M.50, s. 5 (1).

- 16.11 Upon conclusion of an Application investigation, the Integrity Commissioner may, if he/she considers it appropriate, apply to a Judge under section 8 of the *Municipal Conflict of Interest Act* for a determination as to whether the member has contravened Section 5, 5.1 or 5.2 of the Act.

16.12 THE INTEGRITY COMMISSIONER SHALL:

- (a) advise the applicant if he or she will not be making an application to a judge; and
- (b) after deciding whether or not to apply to a judge, provide a written report providing reasons for the decision.