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OFFICE OF THE INTEGRITY COMMISSIONER

# SUBMISSIONS IN RESPONSE TO THE MUNICIPAL LEGISLATION REVIEW

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# **Submissions of the Integrity Commissioner for the City of Toronto**

## **Introduction**

Together with the other Accountability Officers (the Auditor General, the Lobbyist Registrar and the Ombudsman), the Integrity Commissioner is a part of the most well-developed accountability framework at the municipal level in the Province of Ontario. The City of Toronto appointed its first Integrity Commissioner in June 2004 prior to the enactment of Part V of the *City of Toronto Act, 2006* (COTA),<sup>1</sup> which required the appointment of an Integrity Commissioner.

Through its bylaws, Toronto City Council has taken a number of important steps to enhance the accountability framework. The ongoing review of COTA and the *Municipal Conflict of Interest Act*<sup>2</sup> presents an opportunity to further strengthen the accountability framework.

These submissions consist of four parts. The first part includes recommendations about how COTA can be strengthened to enhance the independence and accountability of the Integrity Commissioner. The second part outlines how the statutory framework relating to confidentiality can be improved. The third part outlines the legislative changes necessary to modernize and streamline the regulation of conflicts of interest for elected and appointed officials. The fourth part contains a recommendation to introduce annual disclosures of financial and other interests of elected officials as a part of the overall accountability framework. Each set of recommendations is followed by a brief rationale.

These submissions reflect the views of the Integrity Commissioner, not the views of Toronto City Council. The Integrity Commissioner makes these submissions on the basis of the Office's experience over the past decade.

## **Recommendations about Independence and Accountability**

### **Recommendation 1**

It is recommended that COTA be amended to expressly recognize and entrench the following features of independence:

- a. That the position of Integrity Commissioner is an independent "Officer of Council" similar in status to the Provincial Integrity Commissioner, an Officer of the Assembly.

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<sup>1</sup> S.O. 2006, C. 11, Schedule A.

<sup>2</sup> R.S.O. 1990, C. M.50.

- b. That the Office of the Integrity Commissioner is an independent institution, separate from the City of Toronto, for the purposes of the *Municipal Freedom of Information and Protection of Privacy Act*.<sup>3</sup>
- c. That the Integrity Commissioner has full control of, and is responsible for, the management of his or her office, independent from City Council and City administration.
- d. That the Integrity Commissioner is appointed for a fixed term.
- e. That the Integrity Commissioner can only be appointed or removed for cause on a two-thirds vote of all Council members.
- f. That the Integrity Commissioner is required to table an annual report before Council.
- g. That the Office of the Integrity Commissioner is subject to an external audit.

### *Comments*

Section 159(1) of COTA requires that the Integrity Commissioner carries out her work in an "independent manner." This means that the Commissioner must be free to administer her office and carry out her duties independently from City Council and City administration.

To recognize and entrench the independence of the Integrity Commissioner (as well as the other Accountability Officers), Toronto City Council adopted a comprehensive By-law (Chapter 3 of the *Toronto Municipal Code*, entitled "Accountability Officers") to establish a framework to address necessary governance, policy and support mechanisms required to effectively carry out the functions and ensure independence of each Officer. By enacting this By-law, Toronto City Council demonstrated leadership in the area of accountability and offers a model that stands apart from other municipalities in Ontario.

The Accountability Officers By-law is appended to these submissions at Appendix 1. The process and principles leading to the By-law are well documented in reports provided to Toronto City Council by the Toronto Public Service, which are appended to these submissions at Appendix 2.

The Accountability Officers By-Law reinforces the fact that the City's Accountability Officers are separate and independent from the City's administration and City Council and provides important principles in relation to the independence of the Accountability Officers.

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<sup>3</sup> R.S.O. 1990, c. M.56.

The principles of independence and accountability are of sufficient importance to the proper functioning of the Office of the Integrity Commissioner that the features outlined in the Accountability Officers By-law ought to be enshrined in the governing legislation.

### **Recommendation 2**

It is recommended that COTA be amended to empower and require the City to protect the Integrity Commissioner and all Accountability Officers against risks of pecuniary loss or liability related to the performance of their duties, whether or not they are City employees.

#### *Comments*

Exposure to the risk of lawsuits and judicial reviews related to the performance of their duties is a significant risk for Accountability Officers. This kind of risk could improperly give rise to unreasonable personal liability or negatively impact the independence of the Office. The City should be required to protect its Accountability Officers against risks of pecuniary loss or liability related to the performance of their duties, whether or not they are employees.

## **Recommendations about Confidentiality**

### **Recommendation 3**

It is recommended that section 161 of COTA (the secrecy provision) be amended to make clear that the secrecy provisions in COTA prevail over the *Municipal Freedom of Information and Protection of Privacy Act* and all other provincial legislation.

#### *Comments*

Strong and unambiguous confidentiality and secrecy provisions in COTA are necessary for the effective functioning of the Integrity Commissioner.

This need for Accountability Officers to maintain confidentiality and preserve secrecy has underpinned all of the development work leading to the current accountability framework at the City of Toronto. The City Manager's Report leading to the Accountability Officers By-law describes the importance of confidentiality as follows:

#### **Confidentiality Provisions**

Independent officers are required to maintain confidentiality in the course of their duties and must not disclose information provided to them in

confidence. Confidentiality engenders trust in the accountability function, and ensures the offices are a safe place to turn to for a resolution.<sup>4</sup>

In *Building a 21<sup>st</sup> Century City*, the Joint Ontario-City of Toronto Task Force to Review the City of Toronto Acts and other Private (Special) Legislation<sup>5</sup> stated:

### **A. Oversight Functions**

To ensure high standards of professionalism and ethics, Toronto requires strong oversight functions.

The Task Force therefore recommends that the new Act require (not simply allow) the City to have an empowered and independent integrity commissioner, ombudsman and auditor general, and a lobbyist registry. *We also recommend that the following powers be made available to the appropriate officials: ability to protect confidential information despite the Municipal Freedom of Information and Protection of Privacy Act ...* [emphasis added]

The recent introduction of the *Public Sector and MPP Accountability and Transparency Act, 2014*, S.O. 2014 C.13, Schedule 9, may introduce an ambiguity or conflict with respect to the existing secrecy provisions. To the extent the new legislation overrides, weakens or negates the secrecy provisions, this harms the ability of Accountability Officers to carry out their duties. The proposed change would rectify any potential ambiguity.

### **Recommendation 4**

It is recommended that COTA be amended to clarify and confirm that the duty of confidentiality imposed by sections 161, 169, 173 and 181 does not prevent the Integrity Commissioner and the other Accountability Officers from sharing information with each other, in furtherance of their duties, subject to their reciprocal duties of secrecy and confidentiality.

#### *Comments*

It is sometimes necessary in order to perform their duties under COTA for Accountability Officers to share information with each other. Examples of this include inquiries or investigations into the same or similar matters, joint education and staff training, and the development of policies and protocols on common issues. Sharing information in such circumstances falls within the exemption to the existing secrecy provisions for information to be disclosed "otherwise in accordance with this Part" (see for example s.

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<sup>4</sup> Appendix 2, at p. 6

<sup>5</sup> <http://www.mah.gov.on.ca/Asset1954.aspx>, at p. 7

161(2)(b)). However, for clarity, it should be stated explicitly that Accountability Officers may disclose information to each other, subject to the Part V reciprocal duty of secrecy under which all Accountability Officers operate.

## **Recommendations to Modernize and Streamline the Regulation of Conflicts of Interest for Elected and Appointed Officials**

### **Recommendation 5**

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to clarify and confirm: (a) the ability of City Council to include provisions about conflicts of interest in its Code of Conduct; and, (b) the jurisdiction of the Integrity Commissioner to provide advice and investigate complaints about conflicts of interest.<sup>6</sup>

### **Recommendation 6**

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to clarify that seeking and following advice from the Integrity Commissioner may be considered by the Court in an application under the *Municipal Conflict of Interest Act*.

### **Recommendation 7**

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to introduce a modern definition of conflict of interest that applies broadly to address the reality that conflicts of interest can exist beyond pecuniary interests and in respect of all aspects of a member's activity (not just voting). The definition could be modelled after the definition of conflict of interest in similar legislation applicable to elected officials in the Federal Parliament or provincial legislatures.<sup>7</sup>

### **Recommendation 8**

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to clarify that those subject to an imposition of penalty or other remedial measure(s) by Council are permitted to make representations to Council without contravening the Code of Conduct or the *Municipal Conflict of Interest Act*.

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<sup>6</sup> In his report, titled, *Updating the Ethical Infrastructure* at p. 160 [*infra* note, 8], Justice Cunningham concluded that it was within the authority of municipalities to include a conflict of interest provision in Codes of Conduct. However, this could be confirmed in section 159 of COTA.

<sup>7</sup> For example, section 2 and the definition of "private interest" in the *Members' Integrity Act, 1994*, S.O. 1994, C. 38.

## *Comments about recommendations 5-8*

Recommendations 5-8 are consistent with the framework envisioned by the Honourable J. Douglas Cunningham in the *Report of the Mississauga Judicial Inquiry: Updating the Ethical Infrastructure* (the "Cunningham Report")<sup>8</sup> and in particular his recommendations 7, 8, 9, 10, 11, 12, 13, 14 and 25. The framework proposed by Justice Cunningham brings together the *Municipal Conflict of Interest Act* regime with the Code of Conduct/Integrity Commissioner regime.

From the perspective of municipal councillors, the status quo is fragmented and unnecessarily complex. This is because there exist two regimes for compliance. Members of Council and Local Boards (Restricted Definition) (collectively, "Members") are bound by the *Municipal Conflict of Interest Act* in relation to conflicts of interests that arise from pecuniary interests. Members are also bound by Codes of Conduct and can be subject to investigation for failure to comply. Members in Toronto also are able to seek binding advice from the Integrity Commissioner in relation to Code compliance but not compliance with the *Municipal Conflict of Interest Act*.

From the perspective of the public, the status quo is inaccessible, requiring citizens to commence formal court proceedings to raise concerns about conflicts of interest.

Further rationale for the need to move to a more cohesive framework is well documented in the annual reports of the Office of the Integrity Commissioner<sup>9</sup> and in the findings and recommendations of the Cunningham Report.<sup>10</sup>

## **Recommendation to Introduce Annual Disclosure of Private Interests for Elected Officials**

### **Recommendation 9**

It is recommended that COTA and/or the *Municipal Conflict of Interest Act* be amended to introduce mandatory annual disclosure of private interests for elected officials in Toronto and that the duty of receiving, reviewing, and publishing (as appropriate) the

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<sup>8</sup> [http://www.mississaugainquiry.ca/report/pdf/MJI\\_Report.pdf](http://www.mississaugainquiry.ca/report/pdf/MJI_Report.pdf).

<sup>9</sup> 1. Interim Report of the Integrity Commissioner – April 11, 2005, page 7

(<http://www.toronto.ca/legdocs/2005/agendas/council/cc050412/nomj%2834%29.pdf>)

2. May 8, 2006 – Integrity Commissioner Annual Report for September 1, 2004 to December 31, 2005, page 14

(<http://www1.toronto.ca/City%20Of%20Toronto/Integrity%20Commissioner/Shared%20Content/Files/integrity-commissioner-annual-report-2005-2006.pdf>)

3. July 8, 2008 – Integrity Commissioner End of Term Report – 2008, page 10-11

(<http://www.toronto.ca/legdocs/mmis/2008/cc/bgrd/backgroundfile-14756.pdf>)

4. July 29, 2009 – Integrity Commissioner Annual Report 2009, page 11

(<http://www.toronto.ca/legdocs/mmis/2009/cc/bgrd/backgroundfile-22620.pdf>)

<sup>10</sup> Cunningham Report, *supra*, note 8.



annual disclosure statements be assigned to the Integrity Commissioner. The types of interests to be disclosed could include financial interests (*i.e.* assets, liabilities, real property, debts), outside employment, and outside directorships. The amendments could empower the Toronto City Council to develop a financial disclosure system best suited to Toronto.

### *Comments*

Several jurisdictions across Canada and in the United States permit or require mandatory disclosure of personal interests of elected officials at the municipal level.

The Province of Ontario lags behind other provinces in this regard. The Provinces of Quebec, British Columbia, Saskatchewan, Newfoundland and Labrador, and Manitoba either require or permit municipalities to introduce personal financial disclosure systems.<sup>11</sup> In British Columbia, all elected officials, including local government officials, are required to make annual financial disclosures.<sup>12</sup> In the absence of legislative authority or requirement, the members of the Calgary City Council disclose their financial interests on an annual basis.<sup>13</sup>

To put Toronto in context with other similar-sized municipalities, one can look to the American experience. The four largest U.S. cities all require financial disclosures.

- New York City has required financial disclosures since 1975.<sup>14</sup> Disclosures are required annually for approximately 8,500 elected officials, employees, and candidates, who must disclose their financial affairs, outside positions and interests, as well as those of their spouses, domestic partners, and dependent children.<sup>15</sup>
- The City of Los Angeles requires elected officials, board members, commissioners, and agency heads to make specific disclosures *in addition to* the standard disclosures required for all local government officials upon being

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<sup>11</sup> *An Act Respecting Elections and Referendums in Municipalities*, R.S.Q., c. E-2.2, s. 357 ([http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/E\\_2\\_2/E2\\_2\\_A.html](http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=2&file=/E_2_2/E2_2_A.html)); *Financial Disclosure Act*, R.S.B.C. 1996, C. 139, s. 4 (requiring disclosure for muni officials) ([http://www.bclaws.ca/civix/document/id/complete/statreg/96139\\_01](http://www.bclaws.ca/civix/document/id/complete/statreg/96139_01)); *The Municipalities Act*, C. M-36.1, S.S., 2005, s. 142 (municipalities may require disclosure) (<http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/M36-1.pdf>); *Municipalities Act*, 1999, S.N.L.1999, C. M-24, s. 210 (<http://www.assembly.nl.ca/legislation/sr/statutes/m24.htm#210>); *Municipal Council Conflict of Interest Act*, C.C.S.M. C. M255, ss. 9-10 (<http://web2.gov.mb.ca/laws/statutes/ccsm/m255e.php>).

<sup>12</sup> The British Columbia Ministry of Justice explains the intent of financial disclosures, "[T]o identify what areas of influence and possible financial benefit an elected official, nominee or designated employee might have by virtue of their office, and to ensure the public has reasonable access to the information." (<http://www.ag.gov.bc.ca/financial-disclosure>).

<sup>13</sup> <http://www.calgary.ca/councillors/Pages/Councillor-Disclosure-Statements.aspx>

<sup>14</sup> [http://www.nyc.gov/html/conflicts/downloads/pdf3/fd\\_leg\\_hist/leg\\_his\\_fd\\_1975\\_to\\_2012\\_wlinks.pdf](http://www.nyc.gov/html/conflicts/downloads/pdf3/fd_leg_hist/leg_his_fd_1975_to_2012_wlinks.pdf).

<sup>15</sup> <http://www.nyc.gov/html/conflicts/html/units/disclosure.shtml>.

nominated to office, assuming office, annually while holding office, and upon leaving office.<sup>16</sup>

- The City of Chicago not only requires financial disclosures, but imposes fines on late filers, publicly discloses their names, and (where applicable) may impose employment sanctions.<sup>17</sup>
- The City of Houston, Texas, requires financial disclosures as part of a candidate's application to earn a place on a ballot to be elected to municipal office.<sup>18</sup> City officials must also make annual disclosures.<sup>19</sup> The disclosures are considered public records and must be maintained for five years.<sup>20</sup> All such disclosures are considered to *supplement* disclosures required by state and federal law.<sup>21</sup>

At the provincial level of government, Ontario has been a leader in requiring elected officials to make annual disclosures of personal interests to an integrity or ethics commissioner, first introducing the mandatory disclosure statements in 1988 with the passage of the *Members' Conflict of Interest Act, 1988*.<sup>22</sup> This practice is now required for members of the federal Parliament and all provincial legislatures.

When one considers the level of direct influence that members of Council have in relation to a wide variety of decisions, including approvals for development projects and real property interests, there is no reasonable basis for the lack of personal financial disclosure obligations for elected officials at the City of Toronto.

The Honourable Justice Denise E. Bellamy recommended that Toronto City Council consider introducing a form of financial disclosure for councillors in her 2005 report into the Toronto Computer Leasing and External Contracts Inquiries.<sup>23</sup>

Mandatory disclosure of personal financial interests for elected officials is a well-recognized component of any developed accountable government.<sup>24</sup> Such systems provide appropriate transparency of interests held by public officials, identifying potential conflicts of interest before they arise. The disclosure system and resulting information

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<sup>16</sup> The Los Angeles Ethics Commission provides guidance to city officials at: <http://ethics.lacity.org/infofor/seifilers/index.cfm>. In addition, the California Fair Political Practices Commission provides uniform guidance to local government officials state-wide at <http://www.fppc.ca.gov/index.php?id=755>.

<sup>17</sup> [http://www.cityofchicago.org/city/en/depts/ethics/provdrs/statements\\_of\\_financialinterests/svcs/sfi.html](http://www.cityofchicago.org/city/en/depts/ethics/provdrs/statements_of_financialinterests/svcs/sfi.html).

<sup>18</sup> <http://www.houstontx.gov/2013election/2013electionpacket.pdf>.

<sup>19</sup> [http://www.houstontx.gov/2013election/\(11\)Ch18.pdf](http://www.houstontx.gov/2013election/(11)Ch18.pdf).

<sup>20</sup> *Ibid.*

<sup>21</sup> <http://www.houstontx.gov/compliance/officials.html>.

<sup>22</sup> S.O. 1988, C. 17

<sup>23</sup> [Report, Toronto Computer Leasing Inquiry/Toronto External Contracts Inquiry](#), by the Honourable Madam Justice Denise E. Bellamy (the Bellamy Report) at recommendation 39.

<sup>24</sup> [http://www.unodc.org/documents/corruption/Publications/StAR/StAR\\_Publication\\_-\\_Income\\_and\\_Asset\\_Declarations.pdf](http://www.unodc.org/documents/corruption/Publications/StAR/StAR_Publication_-_Income_and_Asset_Declarations.pdf).

can provide the public with assurance that elected officials are not susceptible to inappropriate bribes, commissions or profits. Disclosure of this information in a transparent way can help "build the trust of citizens in their government."<sup>25</sup> The disclosure system can also "provide an effective reminder to public officials of the duty to accountability that comes with public office."<sup>26</sup> Finally, public disclosure ensures that the public and oversight offices have sufficient information to exercise appropriate scrutiny over the actions of elected officials.

The lack of personal financial disclosure at the municipal level is also inconsistent with the general trend toward open government and, in particular, as it relates to other similar interests on the part of elected officials. For instance, the Code of Conduct require councillors to disclose gifts, including sponsored travel and donations to community events, the Toronto City Council has put in place policies to disclose expenses, and the *Municipal Elections Act, 1996*<sup>27</sup> provides for disclosure of campaign contributions.

It is my view that the Toronto City Council could implement a financial disclosure system through its bylaws. However, the Municipal Legislation Review presents an opportunity to set a high standard of accountability and to specifically integrate this important component into the accountability framework.

Respectfully Submitted,

Valerie Jepson  
Integrity Commissioner

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<sup>25</sup> *Ibid.*, at p. xi.

<sup>26</sup> *Ibid.*, at p. 1.

<sup>27</sup> S.O. 1996, C. 32, Schedule 2 (as amended 2012, C. 8, Schedule 35).